

No. 10342

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.  
POLSON LOGGING COMPANY,  
Respondent.

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Transcript of Record

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Upon Petition for Enforcement of an Order of the National  
Labor Relations Board

FILED

MAR 30 1943

PAUL P. O'BRIEN,  
CLERK





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Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America  
Before The National Labor Relations Board  
19th Region

Case No. XIX- -685

Date filed July 8, 1940

In the Matter of

POLSON LOGGING COMPANY and  
OZETTE RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN  
CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that the Polson Logging Company and Ozette Railway Company at Hoquiam, Washington, has engaged in and is engaging in unfair labor practices within the meaning of Section 2, subsections (1) and (3) of said Act, in that

On or about the date hereinafter specified, it, by its officers, agents, and employees, terminated the employment of:

Name of Employee	Name of Job	Date Employment Terminated
Dave Lytle	Conductor	May 21, 1940
Clayton Reece	Brakeman	May 21, 1940

because of their membership and activities in behalf of the Brotherhood of Railroad Trainmen, a labor organization, and at all times since such date

it has refused and does now refuse to employ the above named employees, in violation of Section 8, subdivision (3), of said Act.

By the acts set forth in the paragraph above, and by other acts and statements, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**BROTHERHOOD OF RAIL-  
ROAD TRAINMEN**

820 Superior Ave. W.,  
Cleveland, Ohio

By S. C. PHILLIPS,  
Representing Brotherhood of  
Railroad Trainmen.

Subscribed and sworn to before me this 6th day  
of July, 1940 At Seattle, Wash.

/s/ ELWYN J. EAGEN  
Regional Director

[Title of Board and Cause.]

Case No. XIX-C-685

Date filed July 8, 1940.

Date Amended Jun. 30, 1941.

### AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Polson Logging Company, Hoquiam, Washington, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that on or about the date hereinafter specified, it, by its officers, agents, and employees, terminated the employment of:

Name of Employee	Name of Job	Date Employment Terminated
Dave Lytle	Conductor	May 21, 1940
Clayton Reece	Brakeman	May 21, 1940

because of their membership and activities in behalf of the Brotherhood of Railroad Trainmen, a labor organization, and at all time since that date it has refused and does now refuse to employ the above named employees, in violation of Section 8, subdivision (3), of said Act.

By the acts set forth in the paragraph above, and by other acts and statements, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

BROTHERHOOD OF RAIL-  
ROAD TRAINMEN

820 Superior Ave. W.,  
Cleveland, Ohio.

By C. W. STEVENS,  
Deputy President  
43 Rose Friend Apts.,  
Portland, Oregon.

Subscribed and sworn to before me this 28 day  
of June, 1941 At Portland, Oregon.

[Seal] E. SETTLEMIER

Commission expires 1/26/45.

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[Title of Board and Cause.]

COMPLAINT

It having been charged by the Brotherhood of Railroad Trainmen, hereinafter called Brotherhood, that Polson Logging Company, a corporation, hereinafter called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, (49 Stat. 449), here-

inafter referred to as the Act, the National Labor Relations Board by the Regional Director for the Nineteenth Region, as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulation, Series 2, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

I.

During all the time and on all the dates hereinafter mentioned the respondent was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington, having its principal office and place of business in the City of Hoquiam, State of Washington.

During all the time and on all the dates hereinafter mentioned said respondent has been and now is engaged in the business of producing, selling, and distributing logs, lumber, and lumber products, and has continuously owned and operation a sawmill for the manufacture of lumber, and lumber products at Hoquiam, Washington.

II.

The respondent in the course and conduct of its business causes and has continuously caused a substantial portion of the logs, lumber, and lumber products produced by it to be sold, shipped, and transported in interstate commerce from its operations in and near Hoquiam, Washington, to, into, and through States of the United States, other than the State of Washington.



## III.

The respondent in the course and conduct of its business owns, maintains, and operates a logging railroad. Said railroad is connected with the Northern Pacific Railroad, a common carrier. Cars of the Northern Pacific Railroad are operated over the rails of the respondent's railroad. Said Northern Pacific owned cars are loaded and shipped from respondent's loading dumps located on its property to the main line of the Northern Pacific Railroad, and thence to States of the United States, other than the State of Washington.

## IV.

Brotherhood of Railroad Trainmen is, and at all times hereinafter mentioned has been, a labor organization within the meaning of Section 2, subsection (5) of the Act.

## V.

On or about May 21, 1940, the respondent discharged Dave Lytle, a conductor, and Clayton Reece, a brakeman, and at all times since such date has refused to reemploy them, because of their membership in and activities on behalf of the Brotherhood, or because they refused to remain, or become members of International Woodworkers of America.

## VI.

Respondent made statements derogatory to the Brotherhood, and known leaders of the Brother-



hood's organizational movement, in that, among other things,

1. On or about April 1, 1940, by and through Bennett Ellingsen, Assistant Manager, informed its employees that it would close or curtail its operations if the employees joined the Brotherhood; threatened certain of said employees with discharge because of their activities in connection with the solicitation of membership in, the bringing about the formation of, and the taking of membership in said Brotherhood.

2. On or about May 18, 1940, by and through A. M. Polson, General Manager, questioned a number of its employees concerning the formation of the Brotherhood among its employees, and the membership of said employees in said Brotherhood; by statements disparaging to the Brotherhood attempted to discourage the membership of said employees in the Brotherhood, and encourage said employees to undertake, or retain membership in the International Woodworkers of America, affiliated with the Congress of Industrial Organizations, a labor organization within the meaning of Section 2, subsection (5) of the Act.

## VII.

By the acts alleged in Paragraph V, the respondent has discouraged, and is discouraging, membership in the Brotherhood, and has encouraged, and is encouraging, membership in the International Woodworkers of America, and has discriminated, and is discriminating, in regard to hire and tenure

of employment, and has engaged in, and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

### VIII.

By the acts alleged in Paragraphs V, and VI, and by each of them the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has engaged in, and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

### IX.

The activities of the respondent alleged in Paragraphs V, and VI, herein, occurring in connection with the operations of the respondent as set forth in Paragraphs I, II, and III, herein, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States of the United States and have led and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

### X.

The acts of the respondents, acting through its officers, agents, and employees, hereinbefore set out, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3) of the Act, and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on this 30th day of June, 1941, issues its complaint

against Polson Logging Company, respondent herein.

[Seal]

THOMAS P. GRAHAM, JR.

Regional Director, National Labor Relations Board,  
Nineteenth Region, 407 U. S. Court House,  
Seattle, Washington.

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[Title of Board and Cause.]

### ANSWER TO COMPLAINT

Comes now the Respondent and for answer to the complaint herein admits, denies and alleges as follows:

#### I.

Answering Paragraph I, Respondent admits the facts alleged therein.

#### II.

Answering Paragraph II of the complaint, Respondent admits that a substantial portion of the lumber produced and lumber products produced by it from logs cut by Respondent has been sold and shipped in interstate commerce from its operation in and near Hoquiam. Respondent denies that a substantial portion, or any portion, of the logs produced by it has been shipped in interstate commerce or through states in the United States other than the State of Washington.

#### III.

Answering Paragraph III of the complaint, Respondent admits all of the facts alleged herein ex-

cept that Respondent denies Northern Pacific's own cars are loaded and shipped from Respondent's loading dump located on its property to the main line of the Northern Pacific Railroad, and thence to states of the United States other than the State of Washington.

#### IV.

Answering Paragraph IV of the complaint, Respondent admits the facts alleged therein.

#### V.

Answering Paragraph V of the complaint, Respondent admits that it discharged Dave Lytle, a conductor, and Clayton Reece, a brakeman, on or about the 21st day of May, 1940, but denies that the reason for the discharge was because of membership in, and activities for and on behalf of the Brotherhood or because they refused to remain or become members of the International Woodworkers of America. Respondent further admits that it has failed and refused to re-employ said employees.

#### VI.

Answering Paragraph VI, Respondent denies each and every allegation therein contained.

#### VII.

Answering Paragraph VII, Respondent denies each and every allegation therein contained.

#### VIII.

Answering Paragraph VIII, Respondent denies each and every allegation therein contained.

IX.

Answering Paragraph IX, Respondent has no knowledge of the facts therein contained and therefore denies the same.

X.

Answering Paragraph X, Respondent has no knowledge of the facts therein contained and therefore denies the same.

By way of affirmative defense, Respondent alleges that Dave Lytle and Clayton Reece were discharged on or about the 21st day of May, 1940, because of their failure to observe and abide by safety rules and regulations.

Wherefore, Respondent having answered, Respondent prays the complaint and charge herein be dismissed.

R. W. MAXWELL

Attorney for Respondent

R. D. MERRILL

President,

Polson Logging Company

Office and Postoffice Address:

Polson Logging Company, Respondent

Hoquiam, Washington

R. W. Maxwell, Attorney for Respondent

354 Stuart Building

Seattle, Washington

(Duly Verified.)



[Title of Board and Cause.]

Mr. Patrick H. Walker,  
for the Board.

Mr. Robert W. Maxwell,  
of Seattle, Washington,  
for the respondent.

Mr. C. W. Stevens,  
of Portland, Oregon,  
for the Union.

### INTERMEDIATE REPORT

Upon an amended charge<sup>1</sup> duly filed by the Brotherhood of Railroad Trainmen, herein called the Trainmen, the National Labor Relations Board, herein called the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated June 30, 1941, against Polson Logging Company herein called the respondent, alleging that the respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Trainmen.

With respect to the unfair labor practices, the complaint alleged in substance (1) that on or about

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<sup>1</sup>The original charge was filed on July 8, 1940, and the amended charge on June 30, 1941.

May 21, 1940, the respondent discharged Dave Lytle, a conductor, and Clayton Reece, a brakeman, because of their membership in the Trainmen; (2) that the respondent threatened to close down or curtail its railroad operations if its employees joined the Trainmen or the Brotherhood of Locomotive Firemen and Enginemen, herein called the Firemen, and by other acts and statements the respondent disparaged the Trainmen and Firemen in an attempt to discourage membership in the Trainmen and Firemen by its employees and sought to encourage them to become or retain membership in the International Woodworkers of America, an affiliate of the Congress of Industrial Organizations.<sup>2</sup>

On July 11, 1941, the respondent filed its answer to the complaint, admitting that it was engaged in interstate commerce within the meaning of the Act, but denying it had engaged in the alleged unfair labor practices. The answer further alleged by way of affirmative defense that it had discharged Lytle and Reece because of their failure to observe and abide by safety rules and regulations.

Pursuant to notice, a hearing was held in Hoquiam, Washington, on July 28, 29, 30 and 31 and September 12 and 13, 1941, before the undersigned, the Trial Examiner duly designated by the Chief

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<sup>2</sup>The Firemen and the I. W. A. were not made parties to these proceedings. Copies of the complaint were not served upon them and they did not participate in the proceedings. See footnote 11 on page 6, *infra*.

Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the Board's case the respondent moved to strike certain testimony from the record<sup>3</sup> and also moved to dismiss the complaint on the ground that the evidence offered failed to sustain the allegations therein. Rulings were reserved and the motions are hereby denied. At the close of the hearing the attorney for the Board moved to conform the complaint to the proof, which motion was granted.

At the conclusion of the hearing, the parties were afforded and waived opportunity to make oral argument. Counsel for the respondent and the Union asked leave to file briefs, which have been received and considered by the undersigned.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

### FINDINGS OF FACT

#### I. The business of the respondent

Polson Logging Company is a Washington corporation. Its principal office is in Hoquiam, Wash-

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<sup>3</sup>The motion to strike testimony was directed to that testimony appearing on page 162, line 1 to page 165, line 22; page 228, lines 5 to 21; and page 255, line 1 to page 268, line 17.



ington, and it is engaged in logging and sawmill operations in the vicinity of Hoquiam, Washington.

The parties herein stipulated that during the year 1939 the respondent produced approximately 98,000,000 board feet of logs, about 64,000,000 board feet of which were processed into lumber in its own sawmill. The balance of the logs were sold to other sawmills operated in the State of Washington. Of the lumber processed in the respondent's sawmill, approximately 9 per cent was sold and transported in interstate commerce. In connection with and as part of its logging operations, the respondent operates a railroad system for the transportation of logs from the woods to tidewater. The trains run over approximately 45 miles of railroad. The respondent employs approximately 500 men in its logging operations, approximately 33 of whom are engaged in the operation of the respondent's railroad equipment. It was further stipulated that the respondent is presently engaged in business affecting commerce within the meaning of the Act.<sup>4</sup>

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<sup>4</sup>The facts above stipulated concern the operations for the calendar year of 1939. They were obviously based upon the findings concerning the respondent's business made in the Board's Decision and Order entered April 24, 1941, in the representation proceedings in which the respondent, Trainmen and Firemen were parties and there being no substantial changes in the business operations, the former findings were adopted herein for convenience. See *Polson Logging Company and Brotherhood of Railroad Trainmen and Polson Logging Company and Brotherhood of Locomotive Firemen and Enginemen*. 31 N.L.R.B. No. 52.

## II. The organization involved

Brotherhood of Railroad Trainmen is a labor organization admitting to membership all trainmen employed by the respondent engaged in railroad operations.<sup>5</sup>

## III. The unfair labor practices

### A. Background of labor organization and labor relations

In 1935 many of the respondent's employees became members of United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and continued as members in this organization until 1937 when they shifted their affiliation to the International Woodworkers of America, hereinafter called the I.W.A., an affiliate of the Congress of Industrial Organizations. The respondent since 1937 has been bargaining with the I.W.A. as the sole collective bargaining agency for all of its employees, except superintendents, foremen, timekeepers, bullbuckers, civil engineers, check scalers and office employees.

In February 1940 some of the respondent's railroad workers wished to join the Trainmen or the Firemen and requested Dave Lytle, a head brake-

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<sup>5</sup>The complaint alleged that the respondent encouraged membership in the International Woodworkers of America, affiliated with the Congress of Industrial Organizations, in violation of Section 8 (1) of the Act; however, the I.W.A. was not a party to these proceedings nor had a copy of the complaint and notice of hearing been served upon it.

man and old time Brotherhood member, to assist them. Lytle wrote to the secretary of Lodge 403 of the Trainmen at Tacoma, Washington, secured a number of application blanks, and distributed the applications to the employees engaged in railroad operations. Lytle spent much of his spare time during March and April of 1940 in organizing the men and it appears that before May 1, 1940, substantially all of the railroad employees had joined either the Trainmen or the Firemen.

On July 8, 1940, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen filed separate petitions alleging that questions affecting commerce concerning the representation of employees of the respondent herein had arisen and requested an investigation. The cases were consolidated and a hearing held. On April 24, 1941, the Board issued its Decision and Order in which it found that the units contended for by the Trainmen and the Firemen and Engineers were inappropriate,<sup>6</sup> and dismissed the petitions of the two Brotherhood unions.

#### B. Acts of interference, restraint and coercion

During the aforesaid period when Lytle was engaged in promoting the organization of the railroad employees into the Trainmen and Firemen brotherhoods, Bennett Ellingson, assistant superintendent

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<sup>6</sup>Polson Logging Company and Brotherhood of Railroad Trainmen and Polson Logging Company and Brotherhood of Locomotive Firemen and Enginemen, 31 N.L.R.B., No. 52.

of the respondent, attempted to discourage them from joining those unions. Wood, a locomotive engineer, testified that on or about May 1 while his train was waiting on a siding, Ellingson came up to him and asked how the locomotive was working. Wood replied that it was working satisfactorily, whereupon Ellingson stated, in substance: that there was a lot of repair work needed on the engine; that the respondent had intended to put it into the shop for overhauling together with other engines needing repairs, but that since Brotherhood trouble was apparently developing, the respondent had decided not to make engine repairs, and might decide to close down operations. Wood replied that he did not think there would be any trouble, the men did not want any and Ellingson replied that Groves<sup>7</sup> had brought on the trouble and was a trouble maker. Wood then said that he did not think Groves had "brought up anything more than anyone else," that they were all dissatisfied with the setup with the C.I.O. and had made up their minds to go into the Brotherhood. John Harlan, a locomotive fireman, testified that on or about April, 1940, Ellingson told him that "C. B. Groves was leading us astray." Shortly thereafter, while on Harlan's locomotive, Ellingson told Harlan that the Northern Pacific was going to take over the Polson railroad operations. Nels Hill, a brakeman, testified that he was present during a conversation between Ellingson

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<sup>7</sup>C. B. Groves was a brakeman and a member of the Trainmen.



and Frank Landi, a section foreman, in April or May, 1940, on which occasion Ellingson told Landi that there were two unions in existence among the employees and that they were fighting one another and that some day they would all be "going down the road" (obviously meaning the union members). Tony Plesha, a member of the railroad construction gang, testified that during April or May 1940 Ellingson approached Plesha and Bert Fenton, an engineer, and asked them if they belonged to one of the Brotherhood unions. Plesha replied that they did, whereupon Ellingson asked them what they were going to do when the Northern Pacific took over the respondent's railroad. Dave Lytle testified that in April 1940 while he was working on a gravel train, Ellingson asked him if the railroad men were joining the Brotherhoods.

Ellingson denied that he had made the aforesaid statements or inquiries but admitted he had held conversations with the persons above mentioned on the occasions specified. Landi was also called as a witness by the respondent and testified that he had no recollection of Ellingson having made the statements to him which Hill claimed to have overheard.

Upon consideration of all of the evidence in the record and upon the observation of the witnesses, the undersigned accepts the testimony given by Wood, Harlan, Hill, Plesha and Lytle as credible and true.

C. B. Groves, the brakeman hereinbefore mentioned, was working at respondent's camp 6 in April

1940. Vic Lehman, the camp foreman, called him aside one day and in substance stated that he, Lehman, had been a friend of Groves for a long time and was warning Groves to be careful about discussing Brotherhood affairs as somebody was going to be discharged and it might be Groves.<sup>8</sup>

The above facts clearly indicate that the respondent was opposed to having its railroad employees affiliate with the Trainmen or Firemen. Moreover, Ellingson's remarks made directly to, or in the presence of, some of its railroad employees would tend to discourage membership in the Brotherhood unions. Lehman's statement to Groves clearly indicated that the respondent contemplated summary action to discourage activities in the Brotherhood unions.

The undersigned finds that the respondent, by the statements of Ellingson, its assistant superintendent, and Lehman, a camp foreman, has interfered with, restrained and coerced its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain

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<sup>8</sup>Counsel for the respondent moved to strike Groves' testimony, on the ground that it was hearsay, that Lehman was no longer employed by the respondent, and that the statement, if made, was not binding upon the respondent. Lehman was a camp foreman with power to hire and discharge the camp employees even though he was not Groves' supervisor. Groves' testimony was given on July 28, 1941, and the respondent's evidence was taken on September 12 and 13 and no showing was made that the respondent was unable to produce Lehman as a witness.

collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

### C. The discriminatory discharges

The complaint alleged that the respondent discharged and refused to reinstate Dave Lytle, a conductor, and Clayton Reece, a brakeman, on or about May 21, 1940, and thereafter refused to reinstate them, because of their membership in and activities on behalf of the Trainmen, and because they refused to remain or become members of the International Woodworkers of America. The answer admitted that Lytle and Reece were discharged on or about the time alleged, but denied that the terminations were based on union membership or activities. In an affirmative defense pleaded, the respondent alleged that the above discharges were made for failure to observe and abide by safety rules and regulations.

Dave Lytle was first employed by the respondent in the fall of 1934. He started to work as a second brakeman and after 3 weeks was promoted to a job as first brakeman. In railroad practice the duties of a first brakeman are similar to those of a conductor. The first brakeman receives train orders from the dispatchers and transmits the orders to the other employees on the train. In the fall of 1938 he quit and was off duty for several weeks until Bill Gordon, then respondent's trainmaster, came to his home and requested him to return to work. Lytle did

return and continued in his employment with the respondent until he was discharged on May 21, 1940. He was chairman of the general committee of the Firemen.

Clayton Reece was first employed as a second brakeman in 1928. He was injured in 1930 and did not return to work for the respondent until 1933. After 2 months in the respondent's employ in 1933, he quit. He was rehired in May 1939 and remained continuously employed by the respondent until he was discharged on May 21, 1940. He was secretary of the general committee of the Firemen.

On or about May 16, 1940, Lytle called at the respondent's office at Hoquiam and asked F. A. Polson,<sup>9</sup> commonly called Arnold Polson in the record, to name a date for a negotiating conference between the respondent and a committee representing the Trainmen and Firemen and Polson said he would see the committee on Saturday, May 18, 1940. On May 18, Dave Lytle, Clayton Reece, Sam Key and Lawrence Brant<sup>10</sup> appeared as representatives of the Brotherhoods and Arnold Polson, A. N. Polson, commonly called Alec Polson in the record, and Bennett Ellingson, were present as representatives of management. The Union committee presented a proposed form of agreement covering the employees

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<sup>9</sup>F. A. Polson, A. N. Polson and Bennett Ellingson, respectively, occupied positions as general manager, superintendent and assistant superintendent in the respondent's business.

<sup>10</sup>Lytle and Reece represented the Trainmen and Key and Brant the Firemen.



engaged in railroad operations for the respondent, together with a covering letter stating that a majority of the conductors and brakemen, and of the engineers and firemen had designated the Trainmen and Firemen, respectively, to represent them for collective bargaining purposes and requesting that the respondent sign the agreement tendered. Arnold Polson was spokesman for the respondent and Dave Lytle the spokesman for the Union committee. Polson read the proposed agreement and stated that before giving the question further consideration he wanted to consult with counsel and also stated that the International Woodworkers of America, an affiliate of the Congress of Industrial Organizations, had been bargaining on behalf of all of the respondent's employees and that Key and Brant had previously appeared before him as members of C.I.O. committees. Polson further stated that the respondent was not operating a railroad but was engaged in the logging business and that he thought one union in the business better than two since if there were two unions, jurisdictional disputes were likely to arise.<sup>11</sup> At the conclusion of the confer-

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<sup>11</sup>The complaint alleged that these statements of Arnold Polson on May 18, 1940, discouraged membership in the Brotherhoods and encouraged membership in the I.W.A. When it is considered, however, that the remarks were made to a union negotiating committee, it would seem to follow that the respondent had some privilege to state its position to union representatives. The respondent, however, had no privilege to discharge its employees for Brotherhood activities.

ence, Lytle requested a written reply to the above letter.

On May 29, 1940, the respondent replied and stated that the respondent had entered into agreements with Local 2, I.W.A., covering all of the employees, for a number of years, and still recognized the I.W.A. as the exclusive bargaining agency for all of its employees.

Following the conference on Saturday, May 18, 1940, Lytle and Reece worked on May 20 and May 21, 1940. After quitting work on May 21 they both went into the trainmaster's office to look at the call board and ascertain what their work assignments were for the following day. A black cross had been marked against both of their names on the board and no work assignments for the following day were designated. They asked the trainmaster, Groseclose, what runs they were to take on May 22, 1941. Groseclose, according to Lytle, replied, "Tomorrow is your day off," and further said, "You are not going to work any more until you see Bennett Ellingson." They asked Groseclose why they were being laid off. He replied that Ellingson had said it was for failure to flag the Axford Prairie crossing. Lytle attempted to get in touch with Ellingson at the respondent's camps during May 22, but was not successful. In the evening of the same day he called Ellingson at his home, and, according to Lytle's testimony, Ellingson said, "I can't see you today, I will see you Saturday." On Saturday Lytle saw Ellingson at the Polson office

in Hoquiam and asked why he had been laid off. Ellingson, according to Lytle, stated, "For not flagging the Axford Prairie crossing." Lytle replied, "It has never been flagged," and further said, "You can't flag that crossing without stopping the train and going ahead to flag it." Whereupon Ellingson said, "You don't have to stop. I want you to flag it from the point of the car." Lytle also asked if Ellingson was laying Reece off and Ellingson replied yes, and for the same reason he was laying off Lytle. Lytle then asked if he was to be discharged and Ellingson said that he would let Lytle know on Monday, as he had to consult Arnold Polson first. Reece did not talk with Ellingson in reference to his discharge, but called Groseclose on May 22, 1940, and was told by Groseclose that there would be no work for him for the rest of the week. Reece again called Groseclose on Sunday, May 26, and Groseclose again stated there was no work for him, whereupon Reece requested Groseclose to call him when he needed him. On or about June 15, 1940, Reece called at the Polson office in Hoquiam to inquire about his status and was handed a separation report. The reason stated in the report for the discharge was, "violation of safety rules and/or unsafe operation." A similar separation notice was delivered to Lytle on or about June 15, 1940.

Ellingson testified that on the morning of May 21 he had left the railroad camp of the respondent about 5 a. m. and drove westerly on the highway

towards the Quinalt forest reservation. He caught up with the respondent's engine 18 and followed it to Axford Prairie crossing and noted that the engineer blew his whistle as usual when approaching the crossing, but that neither brakeman was out on the platform of the crummy car and that the door of the dog house was closed.<sup>12</sup> Ellingson stated that he then returned to the railroad camp and put a check mark against the names of Lytle and Reece on the call board and told Trainmaster Groseclose not to put them back to work until he, Ellingson, had talked with them. Later in the day Ellingson discussed the incident with Alec Polson and about 7 o'clock that same night reported the incident to Arnold Polson. A few days later Ellingson, Arnold and Alec Polson further discussed the incident at the respondent's railroad camp when it was decided to discharge both Lytle and Reece for failing to come out of the dog house and ride on the front of the crummy car to signal or flag the engineer across the Axford Prairie crossing. Ellingson had authority to hire and discharge employees and it is significant that this alleged breach of duty required the consideration of three of the respondent's offi-

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<sup>12</sup>The crummy car is a flatcar having an enclosed shanty, commonly called a dog house, constructed on one end. The so-called dog house serves the purpose usually served by a caboose operated in connection with railroad freight trains. The dog house has windows in the front and sides and a sliding door in the rear. The side windowpanes are fixed in sliding panels and may be opened or closed.



cials over a period of several days before a decision was reached as to the disciplinary action to be taken.

The respondent admitted that the only rules or regulations concerning safety operations had been transmitted to employees by verbal instructions. It contended that for many years a rule had been established and generally observed which required both brakemen or one of them to ride out on the front end of the crummy car when the train approached a crossing and from that station to signal the engineer to slow down the train and thereafter, if the intersection was clear, to signal the engineer to proceed across.

Arnold Polson, now general manager, was superintendent and supervisor of railroad operations from 1930 to the early part of 1934. During this period it was the respondent's general practice to push all cars making up a train ahead of the engine. In this type of operation, it had been the understood practice for the head brakeman to ride on the point of the train,<sup>13</sup> signal the engineer to stop on approaching a crossing, the head brakeman then to get off and check the intersection for traffic and signal the engineer to proceed across if the way was clear. This rule or practice was admittedly understood and had been followed by respondent's railroad employees when the trains were operated under those conditions and is not involved as an issue herein.

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<sup>13</sup>On the front end of the first car.

In 1934 after Arnold Polson was made general manager, Jack Morgan succeeded him as the supervisor directly in charge of railroad operations. Morgan effected changes in the method of operation. He ordered that all cars other than the crummy car be hauled behind the locomotive. The crummy car, however, was coupled in front of the locomotive and pushed. Since this method was adopted, it has become the accepted practice, except that on rare occasions some additional cars have been pushed ahead of the engine.

After the above change, the practice of stopping at most of the crossings was abandoned.<sup>14</sup> The train slowed down at crossings, the engineer blew the whistle, and proceeded if the crossing was clear of traffic.

As above stated, the respondent customarily did not issue written rules or instructions to its railroad employees; the record fails to show that after the aforesaid operating changes any specific instructions were issued to all of them concerning their duties.

Alec and Arnold Polson, Ellingson and Grose-

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<sup>14</sup>There were exceptions made, however, as to crossings No. 3 and No. 5, at which the trains continued to stop and the brakeman got off, inspected traffic conditions, and then signaled the engineer to proceed if the way was clear. In 1937 or 1938, Ellingson ordered them to discontinue these stops at crossings No. 3 and No. 5 and follow the procedure observed at the other crossings.



close<sup>15</sup> all testified that following the above discussed changes in operation, they had given verbal instructions pertaining to safety measures to the railroad employees individually and that in these instructions the railroad employees were told that one of the brakemen should stand out on the front end of the crummy car when it only was being pushed ahead of the engine, to signal the engineer to slow down on approaching a crossing, and thereafter to signal the engineer to proceed across if the highway was clear. Ellingson testified that in April 1940 he had reprimanded Lytle for being careless about flagging crossings. Groseclose testified that about 2 weeks before Lytle was discharged, Lytle told him that he had been reprimanded by Ellingson for not flagging crossings. It is significant that the incident which gave rise to the alleged reprimand concerned not Lytle's failure to flag a crossing, but his responsibility in the matter of a "runaway engine." Lytle denied that he had been so reprimanded and further denied that he had ever told Groseclose that he had been. Based upon his observation of the witnesses and upon the entire record, the undersigned has accepted Lytle's testimony as true.

Kalis Heck, presently a shop helper but formerly

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<sup>15</sup>Groseclose, who had formerly been a brakeman, was promoted to the train master's job in 1939. He was under the immediate supervision of Ellingson, the assistant superintendent, and supervised train movements.

a brakeman, who was called as a witness by the respondent, testified that he was told by the above named and other supervisors, when he was working as a brakeman, that when the crummy car was being pushed ahead of the engine, the brakeman, or one of them, should be out on the front end of the crummy car before making a crossing, to signal the engineer to slow down and then signal the engineer to proceed across if the way was clear. It was also stipulated that during the latter part of 1937 and early in 1938, after three highway accidents had occurred near crossings, the Aetna Casualty Company, the respondent's insurer, sent Charles Young to check and report to the insurance company on the respondent's operations. It was further stipulated by the parties that if Young were called as a witness he would testify that he was informed by the respondent's safety engineer that the company had instructed trainmen to flag crossings, that Young made spot checks at highway crossings during the latter part of 1937 and early part of 1938, and that these checks disclosed that the highway crossings were being flagged.

Dave Lytle, a head brakeman, denied he was instructed by any supervisor to flag the engineer from the front end of the crummy car while proceeding over a crossing and further testified that on occasional runs when he acted as a second brakeman his head brakeman had never flagged crossing No. 1, known as Axford Prairie crossing, or ordered Lytle to do so. Lytle on cross-examination quali-

fied the above testimony by admitting that he had flagged crossing No. 3 and No. 4 (No. 4 being presently known as No. 5) during night runs, on instructions from Alec Polson. Paul Pauley, head brakeman for about 21½ years testified that until after Lytle and Reece were discharged he was never instructed to ride out on the platform of the crummy car when it was being pushed ahead of the engine. Pauley admitted, however, that he usually stepped outside of the dog house while running over crossings as he had previous railroad experience before working for the respondent and thought he should do so. Nels Hill, a brakeman since 1912, testified that neither of the Polsons, Ellingson, or Groseclose had informed him of any rules or regulations concerning train operations prior to Lytle's discharge. Hill admitted on cross-examination that in 1937 he had been riding out on the front car of a train and flagged the engineer to stop the train at a crossing. On this occasion there was another car or cars ahead of the crummy car and Hill was on the head car, rather than on the crummy. This was standard practice under the old method of operation and offers no support to respondent's contention that the brakeman was instructed to ride on the front of the crummy car when it only preceded the engine. C. B. Groves, testified he had never received any instructions to flag crossing No. 1, Axford Prairie, unless they were pushing empties ahead of the engine, until after Lytle and Reece were discharged. Groves further testified that he

never flagged his engineer at crossings unless he saw a car coming along the highway, when he would go out on the crummy to see if the engineer saw it also and if the engineer apparently observed it he did not signal him. Reece also testified that he had never been instructed by any supervisor that one of the brakemen was required to ride out on the front end of the crummy car to flag or signal the engineer at crossings.

Key, Wood, Wicklund and Corrigan, all engineers on respondent's railroad, testified in substance that they had been instructed to slow down and blow the locomotive whistle frequently before reaching the crossings; that they were not instructed to look to the brakeman for operating signals at crossings, but that they together with their firemen watched the crossings and used their own judgment as to whether to stop or proceed. Key further testified that sometimes the brakemen on his train stood out on the platform of the crummy car while passing over crossings and at other times they remained in the dog house; also that he would have to lean so far out of the cab window of his engine to see a brakeman standing on the front of the crummy car that it would take him away from the engine controls. Corrigan, the engineer on the train Lytle and Reece were brakemen on at the time they were discharged, testified that while the head brakeman on his trains usually stepped out of the dog house while passing over crossings, he could not say that all of them did.



The record indicates that while it may have been a general practice among a number of employees who had responsibility in the matter, to flag crossings at such times as the crummy was being pushed ahead of the engine, there was a wide difference in understanding among them as to whether this practice was required in strict compliance with the respondent's safety rules or was a matter left more to the individual judgment. The alleged rule on flagging crossings, admittedly oral, may have been communicated to certain of the employees responsible for that function, but the undersigned is not convinced that it was specifically communicated to all employees responsible for its observance, and credits the testimony of Lytle and Reece that it was not communicated to them. It further appears that prior to the discharge of Lytle and Reece, no brakeman had been reprimanded or disciplined for similar violations of the alleged rule. Alec Polson and Ellingson, the respondent's superintendent and assistant superintendent, respectively, admitted that no other employees had ever been laid off or discharged for violation of the alleged rule.

The evidence shows that Lytle was the leader in the organization of the two Brotherhood unions among the railroad employees of the respondent, and that Reece, while engaging in such activities to a somewhat lesser extent was closely associated with Lytle, in those activities. Reece and Lytle were members of the Brotherhood committee which met with the respondent's representatives on May

18. It is clear, therefore, and is not denied, that the respondent had knowledge of their union affiliation and activities. As has been found in Section B, *supra*, the respondent opposed the organization of the Brotherhood unions among its employees. The infraction of the alleged safety rule by Lytle and Reece, followed by their discharge, occurred only 3 days after the May 18 meeting.

Upon consideration of the entire record, the undersigned finds that the respondent discharged Dave Lytle and Clayton Reece on May 21, 1940, and thereafter refused to reinstate them, because they joined and assisted the Brotherhood of Railroad Trainmen and engaged in concerted activities with other employees of the respondent for the purposes of collective bargaining and other mutual aid and protection.

The undersigned finds that the respondent discriminated in regard to the hire and tenure of employment of Dave Lytle and Clayton Reece, thereby discouraging membership in the Brotherhood of Railroad Trainmen.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondent as set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes bur-



dening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the respondent has engaged in and is engaging in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action deemed necessary to effectuate the policies of the Act.

It has been found that the respondent discharged Dave Lytle and Clayton Reece upon May 21, 1940, and thereafter refused to reemploy them for the reason that they had joined and assisted a labor organization and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection. It will therefore be recommended that the respondent offer them immediate and full reinstatement to their former or substantially equivalent positions. It will be further recommended that the respondent make them whole for any loss of pay they have suffered by reason of their discharge by payment to them of a sum equal to that amount which they would normally have earned as wages from the date of their discharge to the date of their offer of reinstatement, less their net earnings,<sup>16</sup> during said period.

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<sup>16</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See

## CONCLUSIONS OF LAW

1. Brotherhood of Railroad Trainmen is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Dave Lytle and Clayton Reece, and thereby discouraging membership in the Brotherhood of Railroad Trainmen, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

## RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in this case, the undersigned recommends that the re-

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Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

spondent, Polson Logging Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Brotherhood of Railroad Trainmen, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Dave Lytle and Clayton Reece, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges;

(b) Make whole the said Dave Lytle and Clayton Reece for any loss of earnings resulting from the respondent's discrimination against them by payment to each of them of a sum of money equal

to that which they would normally have earned as wages from May 21, 1940, to the date of the respondent's offer of reinstatement, less their net earnings<sup>17</sup> during said period;

(c) Immediately post notices in conspicuous places throughout its lumber camps in the vicinity of Hoquiam, Washington, and maintain such notices for a period of at least sixty (60) consecutive days stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of the Brotherhood of Railroad Trainmen and that the respondent will not discriminate against any employee because of membership in or activities on behalf of this organization or any other labor organization of its employees;

(d) Notify the Regional Director of the Nineteenth Region in writing within twenty (20) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the respondent notifies the said Regional Director in writing that it will comply

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<sup>17</sup>See footnote 16, *supra*.

with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

Dated: January 3, 1942.

**HENRY J. KENT**

**Trial Examiner**



[Title of Board and Cause.]

RESPONDENT'S EXCEPTIONS TO  
INTERMEDIATE REPORT AND RECORD

Received original and 4 copies of Exceptions.

Respondent, Polson Logging Company, herewith enters the following exceptions to the intermediate report, findings and recommendations by the Trial Examiner and the records in the above-entitled case pursuant to Article II, Section 33, of the Rules and Regulations of the National Labor Relations Board, Series 2, as amended.

Respondent excepts:

1. To admission over Respondent's objections of the testimony recorded in the transcript at Page 162, Line 1 to Page 165, Line 22.
2. To refusal of the Trial Examiner to grant Respondent's motion to strike the testimony reported in the transcript at Page 162, Line 1 to Page 165, Line 22.
3. To refusal of the Trial Examiner to grant Respondent's motion to strike the testimony reported in the official transcript on Page 228, Line 5 to 21.
4. To refusal of the Trial Examiner to grant Respondent's motion to strike the testimony reported in the official transcript, Page 255, Line 1 to Page 268, Line 17.
5. To refusal to grant Respondent's motion to dismiss the complaint upon the ground that the evidence does not support or sustain the allegations



of the complaint and the charges against Respondent.

6. To the finding that Respondent has interfered with, restrained and coerced its employees or any of them in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

7. To findings of the Trial Examiner that Mr. Lytle and Mr. Reece were discharged for their membership in, activity in support of, and for and on behalf of, the Brotherhood of Trainmen.

8. To findings that the company has refused to reinstate Mr. Lytle and Mr. Reece because of their membership in or activity for and on behalf of the Brotherhood of Trainmen.

9. To the finding that Respondent had no regulation requiring that highway crossings be flagged from the front end of the crummy when the engine was pushing the crummy car ahead of it across highway crossings.

10. To the finding that trainmen, enginemen and firemen had not been instructed regarding flagging of highway crossings.

Respondent further objects to the recommendations of the Trial Examiner and hereby enters the following specific objections and exceptions:

1. Referring to Paragraph 1 of the proposed

recommendation of the Trial Examiner, Respondent excepts to Paragraph (a) thereof upon the ground and for the reason that the evidence does not support the entering of such an order and upon the further ground that Paragraph 1 (a) is too broad in any event under the evidence of this case.

2. To Paragraph 1 (b) upon the ground and for the reason that said recommended order is not supported by the evidence herein and upon the further ground that said recommended order is too broad in any event and, more particularly, too broad in the light of the evidence herein.

3. Referring to Paragraph 2 of the proposed recommended order, Respondent excepts to Paragraph (a) thereof upon the ground that said recommendation is not supported by the evidence herein.

4. Referring to Paragraph 2 (b), Respondent objects to the proposed order and recommendations upon the ground and for the reason that it is not supported by the evidence herein and upon the further ground that there is no evidence in the records showing that said David Lytle and Clayton Reece sustained any loss of earnings. Respondent further objects to the entering of any order requiring Respondent to reinstate said individuals with back pay for the period mentioned in the complaint or any period whatsoever, upon the ground and for the reason that said Dave Lytle and Clayton Reece were not discharged because of their membership in or activities for and on behalf of the Brotherhood of Railroad Trainmen or any labor organization

and upon the further ground that said individuals have never made application for reinstatement and upon the further ground that said individuals and the Brotherhood of Railroad Trainmen were guilty of neglect and laches in making any claim before the Board of an unlawful discharge. Respondent objects further upon the ground and for the reason that the said claimants, Dave Lytle and Clayton Reece, and the Brotherhood of Railroad Trainmen which acted for and on behalf of said claimants, did not pray for reinstatement with or without back pay.

5. Respondent objects to Paragraph 2 (c) upon the ground and for the reason that the said recommended order is not supported by the evidence and is too broad in any event.

Dated at Seattle, Washington, this 14th day of January, 1942.

R. W. MAXWELL

Attorney for Respondent, Pol-  
son Logging Company.

R. W. Maxwell  
354 Stuart Building  
Seattle, Washington

United States of America  
Before The National Labor Relations Board  
Case No. C-2046

In the Matter of

POLSON LOGGING COMPANY  
and

BROTHERHOOD OF RAILROAD TRAINMEN

Mr. Patrick H. Walker,  
for the Board.

Mr. Robert W. Maxwell,  
of Seattle, Wash.,  
for the respondent.

Mr. C. W. Stevens,  
of Portland, Oreg.,  
for the Trainmen.

Mr. Reynolds C. Seitz,  
of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon an amended charge<sup>1</sup> duly filed by the Brotherhood of Railroad Trainmen, herein called the Trainmen, the National Labor Relations Board, herein called the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington),

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<sup>1</sup>The original charge was filed on July 8, 1940, and the amended charge on June 30, 1941.

issued its complaint dated June 30, 1941, against Polson Logging Company, Hoquiam, Washington, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing, were duly served upon the respondent and the Trainmen.

The complaint alleged in substance (1) that on or about May 21, 1940, the respondent discouraged membership in the Trainmen by discharging Dave Lytle, a conductor, and Clayton Reece, a brakeman, because of their membership in the Trainmen; (2) that the respondent threatened to close down or curtail its railroad operations if its employees joined the Trainmen or the Brotherhood of Locomotive Firemen and Enginemen, herein called the Firemen, and by other acts and statements disparaged the Trainmen and Firemen, herein sometimes collectively called the Brotherhoods, in an attempt to discourage its employees from membership in the Trainmen and Firemen and to encourage them to join or retain membership in the International Woodworkers of America, an affiliate of the Congress of Industrial Organization, herein called the I.W.A.,<sup>2</sup> and (3) that by the foregoing acts the re-

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<sup>2</sup>The Firemen and the I.W.A. were not made parties to these proceedings. Copies of the complaint were not served upon them and they did not participate in the proceedings.



spondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 11, 1941, the respondent filed its answer to the complaint, admitting that it was engaged in commerce within the meaning of the Act, but denying that it had engaged in the alleged unfair labor practices. The answer further alleged by way of affirmative defense that the respondent had discharged Lytle and Reece because of their failure to observe and abide by safety rules and regulations.

Pursuant to notice, a hearing was held in Hoquiam, Washington, on July 28, 29, 30, and 31 and September 12 and 13, 1941, before Henry J. Kent, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Trainmen were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case the respondent moved to strike certain testimony from the record, and also moved to dismiss the complaint on the ground that the evidence offered failed to sustain the allegations therein. Rulings were reserved and subsequently denied by the Trial Examiner in his Intermediate Report. At the close of the hearing the attorney for the Board moved to conform the complaint to the proof. The Trial Examiner granted the motion. During the hearing the Trial Examiner made numerous rulings on other



motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On October 14, 1941, the parties filed briefs with the Trial Examiner. On January 3, 1942, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from such unfair labor practices, that it reinstate Lytle and Reece with back pay, and that it take certain other affirmative action in order to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report, and submitted a brief in support of the exceptions. Pursuant to notice duly served on the parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on February 17, 1942. The respondent and the Trainmen were represented by counsel and participated in the argument.

The Board has considered the respondent's exceptions to the Intermediate Report and its brief and, insofar as the exceptions are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. The business of the respondent

Polson Logging Company is a Washington corporation. Its principal office is in Hoquiam, Washington, and it is engaged in logging and sawmill operations in the vicinity of that town. During the year 1939 the respondent produced approximately 98,000,000 board feet of logs, about 64,000,000 board feet of which were processed into lumber in its own sawmill. The balance of the logs was sold to other sawmills operated in the State of Washington. Of the lumber processed in the respondent's sawmill, approximately 90 percent was sold and transported in interstate commerce. There has been no substantial change in the respondent's operations since 1939. In connection with and as part of its logging operations, the respondent operates a railroad system for the transportation of logs from the woods to tidewater. The trains run over approximately 45 miles of track. The respondent employs approximately 500 men in its logging operations, approximately 33 of whom are engaged in the operation of the respondent's railroad equipment. The respondent concedes that it is engaged in commerce within the meaning of the Act.

### II. The organization involved

Brotherhood of Railroad Trainmen is a labor or-

ganization admitting to membership employees of the respondent.

### III. The unfair labor practices

#### A. Background of labor organizations and labor relations

In 1935 many of the respondent's employees became members of United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and continued as members in this organization until 1937 when they shifted their affiliation to the I.W.A., an affiliate of the Congress of Industrial Organizations. The respondent since 1937 has been bargaining with the I.W.A. as the sole collective bargaining agency for all its employees except superintendents, foremen, timekeepers, bullbuckers, civil engineers, check scalers, and office employees.

In February 1940 some of the respondent's railroad workers wished to join the Trainmen or the Firemen and requested Dave Lytle, a head brakeman and old time Brotherhood member, to assist them. Lytle wrote to the secretary of Lodge 403 of the Trainmen at Tacoma, Washington, secured a number of application blanks, and distributed the applications to the employees engaged in railroad operations. Lytle spent much of his spare time during March and April of 1940 in organizing the men and it appears that before May 1, 1940, sub-

stantially all the railroad employees had joined either the Trainmen or the Firemen.<sup>3</sup>

B. Interference, restraint, and coercion

During the period when Lytle was engaged in promoting the organization of the railroad employees into the Trainmen and the Firemen, Bennett Ellingson, assistant superintendent of the respondent, made remarks to employees which indicated the respondent's opposition to their organization in those unions.

Wood, a locomotive engineer, was approached by Ellingson on or about May 1, while his train was waiting on a siding. According to Wood, the following conversation took place: Ellingson asked how the locomotive was working. Wood replied that it was working satisfactorily. Thereupon Ellingson stated, in substance, that there was considerable repair work needed on the engine; that the respondent had intended to put it into the shop for

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<sup>3</sup>On July 8, 1940, the Trainmen and the Firemen filed separate petitions alleging that questions affecting commerce concerning the representation of employees of the respondent herein had arisen and requested an investigation. The cases were consolidated and a hearing held. On April 24, 1941, the Board issued its Decision and Order in which it found that the units contended for by the Trainmen and the Firemen and Engineers were inappropriate, and dismissed the petitions of the two Brotherhood unions. See Matter of Polson Logging Company and Brotherhood of Railroad Trainmen and Polson Logging Company and Brotherhood of Locomotive Firemen and Enginemen, 31 N.L.R.B., No. 52.



overhauling together with other engines needing repairs, but that since "Brotherhood trouble" was apparently developing, the respondent had decided not to make engine repairs, and might decide to close down operations. Wood replied that he did not think there would be any trouble, because the men did not want any. Ellingson, nevertheless, remarked that Groves<sup>4</sup> had brought on the trouble and was a trouble maker. Wood then said that he did not think that Groves had "brought up anything more than anyone else," that they were all dissatisfied with representation by the C.I.O., and had made up their minds to go into the Brotherhood. John Harlan, a locomotive fireman, testified that in April 1940, Ellingson told him that "C. B. Groves was leading us astray" and that shortly thereafter, while on Harlan's locomotive, Ellingson told Harlan that the Northern Pacific was going to take over the Polson railroad operations. Nels Hill, a brakeman, testified that he was present during a conversation between Ellingson and Frank Landi, a section foreman, in April or May 1940, on which occasion Ellingson told Landi that there were two unions in existence among the employees and that they were fighting one another and that some day they would all "be going down the road." Tony Plesha, a member of the railroad construction gang, testified that during April or May 1940 Ellingson

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<sup>4</sup>C. B. Groves was a brakeman and a member of the Trainmen.



approached Plesha and Bert Fenton, an engineer, and asked them if they belonged to one of the Brotherhood unions, that Plesha replied that they did, whereupon Ellingson asked them what they were going to do when the Northern Pacific took over the respondent's railroad. Dave Lytle testified that in April 1940 while he was working on a gravel train, Ellingson asked him if the railroad men were joining the Brotherhoods.

Ellingson denied that he had made the aforesaid statements or inquiries, but admitted that he had held conversations with the persons above-mentioned on the occasions specified. Landi was also called as a witness by the respondent and testified that he did not recall that Ellingson made the statements to him which Hill claimed to have overheard. We find, however, as did the Trial Examiner, who heard the testimony and observed the witnesses, that the testimony given by Wood, Harlan, Hill, Plesha, and Lytle is credible and true and that remarks were made by Ellingson substantially as set forth above.

C. B. Groves, the brakeman previously mentioned, testified that while he was working at the respondent's Camp 6 in April 1940, Vic Lehman, the camp foreman, called him aside one day and, in substance, stated that since he had been Groves' friend for a long time he was warning Groves to be careful about discussing Brotherhood affairs as somebody was going to be discharged and it might be Groves. Lehman did not testify. No showing was

made that the respondent was unable to produce him as a witness. We find, as did the Trial Examiner, that the incident occurred as related by Groves.

Assistant Superintendent Ellingson's inquiries into the union affiliation of employees,<sup>5</sup> his warnings that the respondent might shut down or alienate its railroad operations as a consequence of the Brotherhoods' activities,<sup>6</sup> and his disparagement of Groves for activity on behalf of the Brotherhoods,<sup>7</sup> and Camp Foreman Lehman's warning to Groves that discharge might be the penalty for discussion of Brotherhood affairs,<sup>8</sup> all tended to discourage the respondent's employees from membership in the Brotherhoods, for they indicated the respondent's opposition to such membership.

We find, as did the Trial Examiner, that by the statements of Ellingson and Lehman, above de-

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<sup>5</sup>See Matter of W. W. Rushton and Mrs. Mary Rushton, doing business as The Rushton Company and/or The Atlanta Playthings Company and United Paper, Novelty and Toy Workers International Union, 33 N.L.R.B., No. 172.

<sup>6</sup>See Matter of The Times-Picayune Publishing Company and International Typographical Union, Unaffiliated, 32 N.L.R.B., No. 82.

<sup>7</sup>See analogous situation in Matter of Sigmund Freisinger, doing business under the name and style of North River Yarn Dyers and Textile Workers Organizing Committee, 10 N.L.R.B., 1043.

<sup>8</sup>See Matter of Colton and Colman, doing business as Kiddie Kover Mfg. Co. and Amalgamated Clothing Workers of America, 6 N.L.R.B. 355, enforced in 105 F. (2d) 179 (C.C.A. 6).

scribed, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### C. The discriminatory discharges

The complaint alleged that the respondent discharged and refused to reinstate Dave Lytle, a conductor, and Clayton Reece, a brakeman, on or about May 21, 1940, and thereafter refused to reinstate them because of their membership in and activities on behalf of the Trainmen, and because they refused to remain or become members of the I.W.A. The respondent's answer admitted that Lytle and Reece were discharged at or about the time alleged, denied that the terminations were based on union membership or activities, and alleged that the discharges were made for failure to observe and abide by safety rules and regulations.

Dave Lytle was first employed by the respondent in the fall of 1934. He started to work as a second brakeman and after 3 weeks was promoted to a job as first brakeman. In railroad practice the duties of a first brakeman are similar to those of a conductor. The first brakeman receives train orders from the dispatchers and transmits the orders to the other employees on the train. In the fall of 1938 Lytle quit and was off duty for several weeks until Bill Gordon, then the respondent's trainmaster, came to his home and requested him to return to work. Lytle did return and continued in his employment with the respondent until he was discharged on May 21, 1940. Prior to his discharge

he was chairman of the general committee of the Trainmen.

Clayton Reece was first employed as a second brakeman in 1928. He was injured in 1930 and did not return to work for the respondent until 1933. After 2 months in the respondent's employ in 1933, he quit. He was rehired in May 1939 and remained continuously employed by the respondent until he was discharged on May 21, 1940. Prior to his discharge he was secretary of the general committee of the Trainmen.

On or about May 16, 1940, Lytle called at the respondent's office at Hoquiam and asked F. A. Polson,<sup>9</sup> commonly called Arnold Polson, to set a date for a negotiating conference between the respondent and a committee representing the Trainmen and Firemen. Polson said that he would see the committee on Saturday, May 18, 1940. On May 18, Dave Lytle, Clayton Reece, Sam Key, and Lawrence Brant<sup>10</sup> appeared as representatives of the Brotherhoods and Arnold Polson, A. N. Polson, commonly called Alec Polson, and Bennett Ellingson, were present as representatives of management. The Brotherhoods' committee presented a proposed form of agreement covering the respondent's employees

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<sup>9</sup>F. A. Polson, A. N. Polson, and Bennett Ellingson, respectively, occupied positions as general manager, superintendent, and assistant superintendent in the respondent's business.

<sup>10</sup>Lytle and Reece represented the Trainmen and Key and Brant the Firemen.



engaged in railroad operations, together with a covering letter stating that a majority of the conductors and brakemen, and of the engineers and firemen had designated the Trainmen and Firemen, respectively, to represent them for collective bargaining purposes and requesting that the respondent sign the agreement tendered. Arnold Polson was spokesman for the respondent and Dave Lytle the spokesman for the committee. Polson read the proposed agreement. He then stated that before giving the question further consideration he wanted to consult with counsel, that the I.W.A. had been bargaining on behalf of all of the respondent's employees, and that Key and Brant had previously appeared before him as members of I.W.A. committees. Polson further stated that the respondent was not operating a railroad but was engaged in the logging business and that he thought one union in the business better than two since if there were two unions, jurisdictional disputes were likely to arise.<sup>11</sup>

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<sup>11</sup>The complaint alleged that these statements of Arnold Polson on May 18, 1940, discouraged membership in the Brotherhoods and encouraged membership in the I.W.A. We agree with the Trial Examiner, however, that inasmuch as the remarks were made to a union negotiating committee and merely expressed the respondent's reasoned preference for dealing with one, rather than two unions, they should not be viewed as coercive within the meaning of Section 8 (1) of the Act. We find the statements material, however, as further evidence of the respondent's opposition to the Brotherhoods (See Section III B, *supra*). As such they have bearing upon the discharges which followed.



At the conclusion of the conference, Lytle requested a written reply to the above letter.

On May 29, 1940, the respondent replied and stated that the respondent had entered into agreements with Local No. 2, I.W.A., covering all the employees, for a number of years, and still recognized the I.W.A. as the exclusive bargaining agency for all its employees.

Following the conference on Saturday, May 18, 1940, Lytle and Reece worked on May 20 and May 21, 1940. After quitting work on May 21 they both went into the trainmaster's office to look at the call board and ascertain what their work assignments were for the following day. A black cross had been marked against both of their names on the board and no work assignments for the following day were designated. They asked the trainmaster, Groseclose, what runs they were to take on May 22, 1941. Groseclose replied, "Tomorrow is your day off," and further said, "You are not going to work any more until you see Bennett Ellingson." They asked Groseclose why they were being laid off. He replied that Ellingson had said it was for failure to flag the Axford Prairie crossing.

Lytle attempted to get in touch with Ellingson at the respondent's camps during May 22, but was not successful. In the evening of the same day he called Ellingson at his home, and Ellingson said, "I can't see you today, I will see you Saturday." On Saturday Lytle met Ellingson at the Polson office in Hoquiam and asked why he had been laid

off. Ellingson stated, "For not flagging the Axford Prairie crossing." Lytle replied, "It has never been flagged," and further said, "You can't flag that crossing without stopping the train and going ahead to flag it." Whereupon Ellingson said, "You don't have to stop. I want you to flag it from the point of the car." Lytle also asked whether Ellingson was laying Reece off and Ellingson said he was, and for the same reason. Lytle then asked whether he was to be discharged. Ellingson said that he would let Lytle know on Monday, as he had to consult Arnold Polson first.

Reece did not talk with Ellingson in reference to his discharge, but called Groseclose on May 22, 1940, and was told by Groseclose that there would be no work for him for the rest of the week. Reece again called Groseclose on Sunday, May 26, and Groseclose again stated that there was no work for him whereupon Reece requested Groseclose to call him when he was needed. On or about June 15, 1940, Reece called at the respondent's office in Hoquiam to inquire about his status and was handed a separation report. The reason stated in the report for the separation was, "violation of safety rules and/or unsafe operation." A similar separation notice was delivered to Lytle on or about June 15, 1940. Neither employee has been reinstated.

Concerning the events immediately preceding the discharges Ellingson testified without contradiction as follows: On the morning of May 21 he left Railroad Camp of the respondent at about 5 a. m.,

drove westward, and soon caught up with the respondent's engine Number 18, on which Lytle and Reece were working as brakemen and assistant brakemen, respectively. Ellingson followed the train to Axford Prairie crossing, where the railroad crosses the Olympic State Highway of Washington, a well-paved but only moderately busy artery. There he stopped and noted that the engineer blew his whistle as usual when approaching the crossing, but that neither brakeman was out on the platform of the "crummy" car<sup>12</sup> which was the only car being pushed in front of the engine. Ellingson also observed that the door of the "dog house" which was situated on the end of the "crummy" nearest the engine was closed. After he observed the conduct of the brakemen he returned to Railroad Camp and made a notation against the names of Lytle and Reece on the call board and told Trainmaster Grose-close not to put them back to work until he, Ellingson, had talked with them. Later in the day Ellingson discussed the incident with Alec Polson and about 7 o'clock that same night reported the incident to Arnold Polson. A few days later Elling-

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<sup>12</sup>The "crummy" car is a flatcar having an enclosed shanty, commonly called a "dog house," constructed on one end. The "dog house" serves the purpose usually served by a caboose operated in connection with railroad freight trains. It has windows in the front (the side nearest the forward end of the "crummy" car) and at the sides and a sliding door in the rear. The side windowpanes are fixed in sliding panels and may be opened or closed.

son and Arnold and Alec Polson further discussed the incident at the respondent's Railroad Camp and decided to discharge Lytle and Reece for failing to come out of the "dog house" and ride on the front of the "crummy" car to signal or flag the engineer across the Axford Prairie crossing.

The respondent claims that it discharged Lytle and Reece because they violated an existing rule. It contends that it is a rule that whenever, as in the situation here involved, only the "crummy" car is pushed in front of the engine the head brakeman or his assistant must go to the front end of the "crummy" when the train approaches a crossing, and signal the engineer either to proceed or to stop. Witnesses for the respondent testified in substance that this rule came into effect in 1934,<sup>13</sup> and marked a departure from a former rule which required the engineer to stop at all crossings, and the brakeman to get down on the ground and flag him across the intersection, that the change was occasioned by a new practice of making up most trains so that instead of pushing many cars, the engine pushed only the "crummy" car in front of it, and that the old rule is still in effect in those comparatively rare instances, when more than the "crummy" is pushed in front of the engine. The record is in sharp conflict as to the existence or nonexistence of the alleged rule.

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<sup>13</sup>The new rule allegedly did not go into effect at crossings No. 3 and No. 4 until 1937 or 1938. Axford Prairie is crossing No. 1.



Alec and Arnold Polson, Ellingson, and Groseclose<sup>14</sup> all testified that following the above-discussed changes in operation, they had given oral instructions pertaining to safety measures to the railroad employees individually and that in these instructions the railroad employees were told that one of the brakemen should stand out on the front end of the "crummy" car when it only was being pushed ahead of the engine, to signal the engineer to slow down on approaching a crossing, and thereafter to signal the engineer to proceed across if the highway was clear.<sup>15</sup> Kalis Heck, presently a shophelper but

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<sup>14</sup>Groseclose, who had formerly been a brakeman, was promoted to the trainmaster's job in 1939. He was under the immediate supervision of Ellingson, the assistant superintendent, and supervised train movements.

<sup>15</sup>Arnold Polson further testified that he had left copies of the State of Washington Loggers Safety Standards in the trainmasters shed in Railroad Camp and had posted a notice ordering all the railroad employees to take a copy. There is conflict in the record as to whether these booklets were actually made available. The majority of the trainmen who testified said that they never saw such notice or a copy. In any event the only applicable section is one which provides that "unless equipped with air, no equipment shall be pushed ahead of the locomotive, unless a brakeman is on head car in constant view of the engineer." An air line ran through the "crummy" here involved. Because it could only be operated from the front end, the respondent claims that the rule required the brakeman to be out on the front of the "crummy." On its face the quoted rule is inapplicable to the in-



formerly a brakeman, who was called as a witness by the respondent, corroborated this testimony of the Polsons, Ellingson, and Groseclose, testifying that while working as a brakeman he had been apprised of the rule in question by them and their superiors. It was also stipulated that during the latter part of 1937 and early in 1938, after three highway accidents had occurred near crossings, the Aetna Casualty Company, the respondent's insurer, sent Charles Young to check and report to it on the respondent's operations, and that if Young were called as a witness he would testify that he was informed by the respondent's safety engineer that the respondent had instructed trainmen to flag crossings, that he made spot checks at highway crossings<sup>16</sup> during the latter part of 1937 and early part of 1938, and that these checks disclosed that the highway crossings were being flagged. Ellingson testified that when Lytle had been laid off on May 21, he admitted to him that he had been in the wrong for not flagging.

On the other hand, Dave Lytle, who is a head

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stant situation. Hence we need not resolve the conflict in testimony as to whether or not it was in force among the respondent's employees.

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<sup>16</sup>We assume that Young would testify that he checked the Axford Prairie as well as all the other crossings. At the Axford Prairie crossing in 1937-38 it was necessary only to do the kind of flagging applicable to situations in which the "crummy" alone was pushed in front of the engine.

brakeman, denied that he had been instructed by any supervisor to flag the engineer from the front end of the "crummy" car while proceeding over a crossing and further testified that on occasional runs when he acted as a second brakeman his head brakeman had never flagged the Axford Prairie crossing, or ordered him to do so. Lytle on cross-examination qualified the above testimony by admitting that he had flagged crossings No. 3 and No. 4 (No. 4 being presently known as No. 5) during night runs, on instructions from Alec Polson. Paul Pauley, head brakeman for about 21½ years testified that until after Lytle and Reece were discharged he was never instructed to ride out on the platform of the "crummy" car when it was being pushed ahead of the engine. Pauley admitted, however, that he usually stepped outside the "dog house" while running over crossings as he had had previous railroad experience before working for the respondent and thought he should do so. Nels Hill, a brakeman since 1912, testified that neither of the Polsons, Ellingson, nor Groseclose had informed him of any rules or regulations concerning train operations prior to Lytle's discharge. Hill admitted on cross-examination that in 1937 he had been riding out on the front car of a train and flagged the engineer to stop the train at a crossing. He stated, however, that on that occasion there was another car or cars ahead of the "crummy" car and he was on the head car, rather than on the "crummy." C. C. Groves, testified that he had never received any

instructions<sup>17</sup> to flag the Axford Prairie crossing unless they were pushing empties ahead of the engine, until after Lytle and Reece were discharged. Groves further testified that he never flagged his engineer at crossings unless he saw a car coming along the highway, when he would go out on the "crummy" to see if the engineer saw it also, and if the engineer apparently observed it he did not signal him. Clayton Reece also testified that he had never been instructed by any supervisor that one of the brakemen was required to ride out on the front end of the "crummy" car to flag or signal the engineer at crossings.

Key, Wood, Wicklund, and Corrigan, all engineers on the respondent's railroad, testified in substance that they had been instructed to slow down and blow the locomotive whistle frequently before reaching the crossings; that they were not instructed to look to the brakeman for operating signals at crossings, but that they together with their firemen watched the crossings and used their own judgment as to whether to stop or proceed. Key further testified that sometimes the brakemen on his train stood out on the platform of the "crummy" car while passing over crossings and

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<sup>17</sup>Groves had admitted in a previous representation proceeding before the Board (Matter of Polson Logging Company and Ozette Railway Company and Botherhood of Railroad Trainmen, 31 N.L.R.B., No. 52.) that the respondent had certain unwritten rules which governed the conduct of employees.

at other times they remained in the "dog house." Corrigan, the engineer on the train on which Lytle and Reece were brakemen at the time they were discharged, testified that while the head brakemen on his trains usually stepped out of the "dog house" while passing over crossings, he could not say that all of them did.

The Trial Examiner in the Intermediate Report found that while it may have been a general practice among a number of the employees to flag crossings at such times as the "crummy" was the only car being pushed ahead of the engine, there was a wide difference in understanding among them as to whether this practice was required in strict compliance with any safety rules or was left more to individual judgment. He stated that he was not convinced that the alleged rule had been communicated to all the employees, and found that it had not been communicated to Lytle and Reece. Under all the circumstances, including the practice of some of the employees (among whom were witnesses who denied the rule's existence) of complying with the alleged terms of the rule, and the hazardous nature of the situation to which the rule was supposed to apply, we find that there was a rule requiring a brakeman to be on the front end of the "crummy" when it alone was being pushed by the engine, and to signal the engineer either to stop or proceed when the train approached the Axford Prairie crossing. We find further, that in view of the nature and length of their employment Lytle and



Reece were chargeable with knowledge of the rule, whether or not they were in fact directly apprised of its existence by a superior.

It remains to be determined whether the respondent discharged Lytle and Reece for their undenied failure to observe the requirements of the rule in question, or for their union activities.<sup>18</sup>

We consider first the seriousness of the infraction in the circumstances in which it occurred. The evidence is that the respondent's engine was traveling at a speed of about 8 miles an hour as it approached a sufficient view of the highway to enable him to stop the train had it become necessary to do so. Moreover, Lytle and Reece, in the dog house, had a good view of the highway from its windows and could have signaled the engineer if necessity had arisen. On the whole, the two men appear to have violated the letter, rather than the spirit, of the safety regulation in question. We conclude that these circumstances were apparent to Ellingson when he observed the violation of the rule. Further, Corrigan, the engineer, testified that he kept an independent lookout. This information, too, was available to Ellingson had he seen fit to inquire of Cor-

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<sup>18</sup>We are not concerned with the manner and extent to which employers maintain discipline and whether penalties imposed for infractions of rules are reasonable. We must consider, however, whether the respondent herein exacted the severe penalty of discharge, not to maintain observance of its rules but to cloak a discharge for union activity.



rigan. With due regard for considerations of public safety, we are of the opinion that the offense of which Lytle and Reece were guilty was one which would normally have been condoned, or passed with a reprimand or minor penalty. This is especially so inasmuch as the two men had seen considerable service with the respondent and had never before been reprimanded for failure to observe safety rules,<sup>19</sup> and inasmuch as Alec Polson and Ellingson admitted that no other employee had ever been laid off or discharged for violation of the rule in question. We are unable to assume that the incident in question was the first breach of that rule which had been observed by the respondent's officials.

Under the circumstances the manner in which the discharges were effected contributes to our conviction that the men were accorded special treatment. The respondent neither confronted nor interrogated them concerning their behavior, and afforded them no opportunity to explain or defend. It failed,

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<sup>19</sup>Ellingson testified that in April 1940 he had reprimanded Lytle for being careless about flagging crossings. Groseclose testified that about two weeks before Lytle was discharged, Lytle told him that he had been reprimanded by Ellingson for not flagging crossings. Lytle denied that he had been so reprimanded and further denied that he ever told Groseclose that he had been. It appears and we find that the incident which gave rise to the alleged reprimand concerned, not Lytle's failure to flag a crossing, but his responsibility in the matter of a "run-away engine."

moreover, to consult Corrigan, the engineer, concerning the incident.

Aspects of Ellingson's behavior on the morning of May 21, when the violation occurred, and in his later handling of the matter, also support the inference that Lytle and Reece were subjected to treatment such as the respondent would not normally have accorded employees caught in a similar dereliction of duty. Ellingson's testimony was that on that morning he had started on a trip involving ordinary business operations; that he never went out for the specific purpose of checking on the conduct of employees; but that when he traveled from camp to camp in the usual course of business he made it a point to observe the conduct of the men operating the trains. Ellingson specifically denied that he had gone out for the purpose of trailing Lytle and Reece. All this testimony, however, is inconsistent with Ellingson's action in abandoning his trip and returning to Railroad Camp, immediately upon his observation of the infraction, for the purpose of arranging that the two men should be laid off. In this connection we note that Lytle testified that shortly after the lay-off Ellingson told him that "Mr." Polson has instructed Ellingson to observe the Axford Prairie crossing on the morning of the 21st. Upon the entire record, including the respondent's attitude of opposition to the organization of its railroad employees in the Trainmen, and Ellingson's quick return to the Railroad Camp after noting the failure to flag, we believe

Lytle.<sup>20</sup> We find that Ellingson made the statement attributed to him, and find that he had been instructed by one of the Polsons to watch the Ax-ford Prairie crossing, on the morning of May 21, 1940. On the entire record we further find that pursuant to those instructions, Ellingson, contrary to his testimony, trailed the train to the crossing for the specific purpose of noting whether or not the two brakemen would observe the safety rule in question.

Explanation for the unusually severe treatment thus accorded Lytle and Reece, we are convinced, lies in the respondent's resentment of their activity in behalf of the Trainmen. We have noted that in the weeks preceding the negotiating conference of May 18, supervisory officials expressed the respondent's opposition to the Brotherhoods.<sup>21</sup> At that conference, too, Arnold Polson clearly reiterated that opposition. Lytle was a leader in the organization of the Brotherhoods, and Reece, though somewhat less active, was closely associated in such activity with Lytle. Both were officers and both were members of the negotiating committee at the May 18 conference. Their discharges, under the unusual circumstances which we have outlined, followed that conference by 3 days.

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<sup>20</sup>Neither Polson denied having given the alleged instruction. We consider Ellingson's denial that he had gone out for the purpose of trailing Lytle and Reece as a denial of Lytle's testimony, but we do not credit it.

<sup>21</sup>Section III B, *supra*.

We find, as did the Trial Examiner, that by discharging and refusing to reinstate Lytle and Reece, the respondent has discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and that by such action the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondent, set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the respondent has engaged in unfair labor practices we shall order the respondent to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent, by discharging and refusing to reinstate Dave Lytle and Clayton Reece, discriminated in regard to their hire and tenure of employment. We shall, therefore, order the respondent to offer each of them immediate and full reinstatement to his former or a substantially



equivalent position without prejudice to his seniority or other rights and privileges, and to make each of them whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he would normally have earned as wages from May 21, 1940, the date of the discharge, to the date of the respondent's offer of reinstatement, less his net earnings<sup>22</sup> during said period.

Since the respondent's acts of discrimination "go to the very heart of the Act,"<sup>23</sup> and since, as we have found, the respondent also engaged in other unfair labor practices, we shall require the respondent to cease and desist from interfering with, restraining, or coercing its employees in the exercise

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<sup>22</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.* 311 U.S. 7.

<sup>23</sup>See *N.L.R.B. v. Entwistle Manufacturing Company*, 120 F. (2d) 532.



of the rights guaranteed in the Act, by discrimination, or in any other manner.<sup>24</sup>

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

### CONCLUSIONS OF LAW

1. Brotherhood of Railroad Trainmen is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Dave Lytle and Clayton Reece, and thereby discouraging membership in the Brotherhood of Railroad Trainmen, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices, affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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<sup>24</sup>Cf. *N.L.R.B. v. Express Publishing Co.*, 61 S. Ct. 693.

## ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Polson Logging Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Discouraging membership in the Brotherhood of Railroad Trainmen, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Dave Lytle and Clayton Reece, immediate and full reinstatement to their former or substantially equivalent positions, without preju-

dice to their seniority or other rights or privileges;

(b) Make whole the said Dave Lytle and Clayton Reece for any loss of earnings resulting from the respondent's discrimination against them by payment to each of them of a sum of money equal to that which he would normally have earned as wages from May 21, 1940, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Immediately post notices in conspicuous places throughout its lumber camps in the vicinity of Hoquiam, Washington, and maintain such notices for a period of at least sixty (60) consecutive days stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1(a) and (b) of this Order; (2) that respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of the Brotherhood of Railroad Trainmen and that the respondent will not discriminate against any employee because of membership in or activities on behalf of that organization;

(d) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the receipt of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 20th day of  
April 1942.

[Seal]

HARRY A. MILLIS,

Chairman.

WM. M. LEISERSON,

Member.

GERARD D. REILLY,

Member,

National Labor Relations  
Board.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

POLSON LOGGING COMPANY,  
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD.

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant  
to the National Labor Relations Act (Act of July  
5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),  
respectfully petitions this Court for the enforce-  
ment of its order against respondent, Polson Log-

ging Company, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Polson Logging Company and Brotherhood of Railroad Trainmen, Case No. C-2046."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Washington corporation, engaged in business in the State of Washington, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, complaint and notice of hearing, respondent's answer to complaint, hearing for the purpose of taking testimony and receiving other evidence, stipulation for corrections in transcript, Intermediate Report, respondent's exceptions thereto, order transferring case to the Board, and oral argument before the Board, the Board, on April 20, 1942, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, its officers, agents, successors, and assigns. The aforesaid order provides as follows:



## ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Polson Logging Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Discouraging membership in the Brotherhood of Railroad Trainmen, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Dave Lytle and Clayton Reece, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges;

(b) Make whole the said Dave Lytle and Clayton Reece for any loss of earnings resulting from the respondent's discrimination against them by payment to each of them of a sum of money equal to that which he would normally have earned as wages from May 21, 1940, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Immediately post notices in conspicuous places throughout its lumber camps in the vicinity of Hoquiam, Washington, and maintain such notices for a period of at least sixty (60) consecutive days stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become or remain members of the Brotherhood of Railroad Trainmen and that the respondent will not discriminate against any employees because of membership in or activities on behalf of that organization;

(d) Notify the Regional Director for the

Nineteenth Region in writing within ten (10) days from the receipt of this Order what steps the respondent has taken to comply herewith.

(3) On April 20, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Robert W. Maxwell, Esquire, respondent's attorney in Seattle, Washington.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR  
RELATIONS BOARD

By ERNEST A. GROSS

Associate General Counsel

Dated at Washington, D. C. this 4th day of January, 1943.

(Duly Verified.)

[Endorsed]: Filed Jan. 11, 1943. Paul P. O'Brien, Clerk.

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## ORDER TO SHOW CAUSE

CCA No. 10342.

Received Jan. 14, 1943, U. S. Marshal.

United States of America, ss:

The President of the United States of America to  
Polson Logging Company, Attention, Mr. F. A.  
Polson, Hoquiam, Washington, and Brotherhood  
of Railroad Trainmen, Attention, S. C.  
Phillips, 820 Superior Avenue, Cleveland (W),  
Ohio.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e) ), you and each of you are hereby notified that on the 11th day of January, 1943, a petition of the National Labor Relations Board for enforcement of its order entered on April 20, 1942, in a proceeding known upon the records of the said Board as "In the Matter of Polson Logging Company and Brotherhood of Railroad Trainmen, Case No. C-2046," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said

United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 11th day of January, in the year of our Lord one thousand nine hundred and forty-three.

[Seal]

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

#### MARSHAL'S RETURN

I hereby certify and return that I received the within writ at Tacoma, Washington, on the 14th day of January, 1943, and thereafter, on the 27th day of January, 1943, I served same upon the Polson Logging Company, a corporation, by handing to and leaving true and correct copies thereof, together with copy of Petition for Enforcement, with F. A. Polson, president of said corporation, at the office of the corporation at Hoquiam.

H. W. ALGEO, United States  
Marshal, Western District  
of Washington,

By E. M. BANNON,  
Deputy.



Washington.

Marshal's Fees:

Travel ----- \$5.04

Service ----- 2.00

Total ----- \$7.04

[Endorsed]: Filed Feb. 1, 1943. Paul P.  
O'Brien, Clerk.

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United States of America  
Before The National Labor Relations Board  
Nineteenth Region.

Case No.  
XIX-C-685

In the matter of

POLSON LOGGING COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

TESTIMONY

City Council Chambers  
Hoquiam, Washington,  
July 28, 1941.

The above-entitled matter came on for hearing at  
10:00 a. m., pursuant to notice, as follows:

Before: Henry J. Kent, Trial Examiner.

Appearances:

Patrick H. Walker, 407 U. S. Court House, Seattle, Washington, appearing for the National Labor Relations Board.

Robert W. Maxwell, 354 Stuart Building, Seattle, Washington, appearing for respondent.

C. W. Stevens, 43 Rose Friend Apartments, Portland, Oregon, appearing for Brotherhood of Railroad Trainmen. [1\*]

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BOARD'S EXHIBIT No. 2

United States of America  
Before The National Labor Relations Board  
Nineteenth Region  
Case No. XIX-C-685

In the Matter of

POLSON LOGGING COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

STIPULATION

This stipulation made and entered into by and between Polson Logging Company a corporation, by and through its attorney R. W. Maxwell, Brotherhood of Railroad Trainmen, by and through its

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\*Page numbering appearing at top of page of original Reporter's Transcript.

representative C. W. Stevens, and Patrick H. Walker, attorney for the National Labor Relations Board, Nineteenth Region.

Witnesseth:

Whereas upon charges and amended charges duly filed by the Brotherhood of Railroad Trainmen, the National Labor Relations Board by the Regional Director for the Nineteenth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, (49 Stat. 449), and its Rules and Regulations, Series 2, as amended, Article IV, Section 1, issued its complaint on the 30th day of June, 1941, against the respondent herein.

Now Therefore, it is stipulated, admitted, and agreed as follows:

### I.

That the following statement of facts may be received in evidence in a hearing to be conducted by the National Labor Relations Board in the above-entitled matter, the same to have the full force and effect as if such facts had been testified to by competent witnesses at said hearing. This stipulation shall not prejudice the right of any party to the proceeding or the said Board to introduce any further or additional testimony.

### II.

That the respondent is a corporation duly organized and existing by virtue of the laws of the State of Washington, and its principal place of

business is in Hoquiam, Washington. The respondent is engaged in logging and sawmill operations at Hoquiam, Washington.

### III.

During 1939 the company produced approximately 98,000,000 board feet of logs, about 64,000,000 feet of which were used in its own mill and the balance sold to sawmills within the State of Washington. Of the lumber produced by the Company's sawmill, approximately 90 per cent is sold and moved in interstate commerce. In connection with and as a part of its logging operations, the company operates a railroad system for the transportation of the logs from the woods to tidewater. The trains run over approximately 45 miles of railroad. The company employs approximately 500 employees in its logging operations, approximately 33 of whom are engaged in the operation of the company's railroad equipment over its railroad system.

### IV.

Brotherhood of Railroad Trainmen is a labor organization within the meaning of Section 2, subsection 5, of the Act, admitting to membership all trainmen employed by the company.

### V.

The respondent is engaged in commerce and in business affecting interstate commerce within the meaning of the Act and decisions of the Supreme Court thereunder.

Dated and Signed this .. day of July, 1941.

POLSON LOGGING COMPANY

By R. W. MAXWELL,  
its attorney.

BROTHERHOOD OF  
RAILROAD TRAINMEN

By C. W. STEVENS  
its representative.

PATRICK H. WALKER,  
Attorney, National Labor  
Relations Board,  
Nineteenth Region.

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F. A. POLSON

called as a witness by and on behalf of the Board,  
being first duly sworn, was examined and testified  
as follows:

Direct Examination

Q. (By Mr. Walker:) Your name is F. A. Polson?  
A. Yes, sir.

Q. You reside at Hoquiam, Washington, do you?  
A. Yes.

Q. You are the general manager of the Polson Logging Company?  
A. Yes.

Q. And have been in excess of ten years?

A. Not quite that long.

Q. Well, in your capacity as general manager, do you have certain subordinate supervisory personnel under you?  
A. Yes.



(Testimony of F. A. Polson.)

Q. Is Mr. Bennett Ellingson one? [10]

A. Yes.

Q. What is his position with the company?

A. He has certain duties— He is in charge of the operation of the trains, the picking up and laying of steel, and other duties.

Q. Did he hold such a position in May of 1940?

A. Yes.

Q. And were his duties the same as you have now indicated, at that time?

A. Generally, yes.

Q. What was the extent of his authority, if any, during May, 1940?

A. He had charge of certain operations, in a supervisory capacity; he had charge of those operations that I mentioned, in a supervisory capacity.

Q. That is, he directed the work done in that particular phase of the operation and had charge of the personnel of that phase?

A. He himself or through his subordinates.

Q. Did he have authority to hire and fire?

A. Yes.

Q. Now, did you also, in May, 1940, have some subordinates in other phases of the operation?

A. Yes.

Q. For instance, several logging camps? [11]

A. Yes.

Q. (By Mr. Walker:) When I asked you this question if the individuals in a supervisory capacity at the logging camp were subordinate to you,

(Testimony of F. A. Polson.)

that is just what I meant; I meant to you and not to Mr. Ellingson.

A. Some were subordinate to me, and some were subordinate to Mr. Ellingson.

Q. What is the title by which the supervisory personnel at the logging camps are known?

A. There is a general superintendent.

Q. That is Mr. A. M. Polson?

A. That is A. M. Polson. And then we have John F. Baker, in charge of the bucking and felling.

Q. At each one of the camps?

A. No, we have one over all the camps; and then we have Mr. Ellingson in charge of the duties mentioned; and then there are underneath the different ones.

Q. Do you generally have a foreman at each camp?      A. Yes.

Q. In May, 1940, were several foremen at the several logging camps,—Was there an employe at the several logging camps of [12] a supervisory nature?

A. I don't quite understand your question.

Q. In May, 1940, were there foremen at the several logging camps,—supervisory individuals?

A. Yes.

Q. And what was the extent of the authority of such foremen at the camps?

A. Well, that is limited, according to the nature of their work; and also, their experience; it may or may not be equal among them all.

(Testimony of F. A. Polson.)

Q. Were the foremen in the several camps in May, 1940, individuals who had the power to hire and fire?

A. Yes; that is, in accordance with company regulations.

Q. Now, in May, 1940, Mr. Polson, who had charge of the labor relations for the Polson Logging Company?

A. Well, Mr. Ellingson and myself.

Q. The two of you?

A. Yes. That is a general question, and if there is anything particular that you want to bring out, I would like to have it a little more specific.

Q. What were your duties as a labor relations man for the company in May of 1940?

A. Well, to meet with committees and give consideration to various matters, anything for the betterment of conditions; along those lines. [13]

Q. Did your duties entail meeting with negotiating committees and grievance committees?

A. Yes.

Q. Were the grievance committees and negotiating committees representing your employees, employees of the Polson Logging Company?

A. Yes; there might have been others added to that at different times.

Q. (By Mr. Walker:) Mr. Polson, I hand you what has been marked as Board's Exhibit 3 for identification, and ask you if that is a carbon copy of a letter prepared by you (handing document to the witness)?

(Testimony of F. A. Polson.)

A. I don't know whether that is an exact copy or not.

Mr. Maxwell: It was made up in your office?

Mr. Walker: That is right.

Mr. Maxwell: That is not an exact copy.

Mr. Walker: It does not have the heading "Polson Logging Company," but the content is the same. Mr. Examiner, we are substituting a copy which was just handed me by Mr. Maxwell, for the copy which was marked, and I ask that a substitute marking be made, marking this copy that I now have in my hand as Board's Exhibit 3. It is the same, identically, with the [14] exception of the heading.

Trial Examiner Kent: That may be done.

Mr. Walker: Will you read the question, please?

(Thereupon, the last question was read aloud by the reporter as above recorded.)

A. Yes.

Q. (By Mr. Walker:) Mr. Polson, I hand you what has been marked as Board's Exhibit 4 for identification and ask you if that is a carbon copy of a letter?

A. It has a notation, "No. 1"; it is not a carbon copy of the letter received by me, but is apparently a copy.

Q. Mr. Polson, in lieu of the carbon copy, or what was received as the carbon copy, which was marked as Board's Exhibit 4, I now hand you an instrument which I will ask the reporter to mark

(Testimony of F. A. Polson.)

Board's Exhibit 4 in lieu of the other one originally marked; I will ask you what that is.

A. That is a communication received by me.

Q. When was it received by you?

A. I couldn't tell you.

Q. Where was it received by you?

A. It was given to me in the office of the Polson Logging Company. [15]

Q. By whom?

A. I don't know who presented it; it was presented by a committee.

Q. Who composed the committee?

A. Well, according to this, Mr. Lytle and Mr. Key—Mr. Sam Key,—were members of the committee.

Q. Was anybody else present?           A. Yes.

Q. Who?

A. I would have to refresh myself on that.

Q. Does it refresh your recollection that Mr. A. M. Polson, Mr. Bennett Ellingson, and Mr. Clayton Reece, and Mr. Lawrence Brant were also there?

A. I believe they were present, and I believe there were perhaps some others present.

Q. Somebody else representing or appearing on behalf of the company?

A. No; someone else on the committee. I may be mistaken.

Q. Were they individuals who represented,——  
Mr. Stevens: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)



(Testimony of F. A. Polson.)

Trial Examiner Kent: On the record.

Q. (By Mr. Walker:) Were all the individuals present at the meeting who represented the Brotherhood employees of the Polson [16] Logging Company?

A. The committee was composed of employees of the Polson Logging Company.

Q. Was Mr. W. J. Williams at the meeting? If you recall?

A. I believe he was.

Q. Was what has been marked as Board's Exhibit 3 an answer prepared by you to Board's Exhibit 4?

A. Yes.

Mr. Walker: I offer in evidence, Mr. Examiner, what has been marked as Board's Exhibits 3 and 4, together with the duplicates thereof.

Trial Examiner Kent: They may be admitted.

(Whereupon, the documents heretofore marked for identification as Board's Exhibits 3 and 4, were received in evidence.)

(Testimony of F. A. Polson.)

BOARD'S EXHIBIT NO. 3

Copy

May 29, 1940

Mr. Dave Lytle, Chairman,  
Brotherhood of Railroad Trainmen's General  
Grievance Committee,  
349 Cottage Street,  
Hoquiam, Washington.

Mr. Sam Key, Chairman,  
Brotherhood of Locomotive Firemen and  
Enginemen's General Grievance Committee,  
Box 193-B, Star Route #1,  
Hoquiam, Washington.

Gentlemen:

We have for acknowledgment your recent communication addressed to Mr. Arnold Polson, General Manager, Polson Logging Company and Ozette Railway Company. Your communication reads as follows:

"A majority of the Conductors and Brakemen and the Engineers and Firemen working in your train service have designated the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, respectively, as their representatives in collective bargaining under The National Labor Relations Act and you are therefore requested to sign the attached Agreement with the Chairmen and Secretaries of the General Grievance Committees of the B. R. T. and B. L. F. and E."

(Testimony of F. A. Polson.)

We received attached to your communication a proposed agreement, intended to be signed between our company and the two Brotherhoods, and to cover the railway logging department service employees of either or both the Polson Logging Company and the Ozette Railway Company.

Please be informed that the Polson Logging Company has had an agreement with Local No. 2, I.W.A., headquarters Aberdeen, Washington, for a number of years, and that under the terms of this agreement, as negotiated from time to time, we have and still recognize Local No. 2, I.W.A., as the exclusive bargaining agency for all the employees in this company's logging operations.

It is our understanding of the National Labor Relations Act that where a majority of a company's employees have designated a particular union as their collective bargaining agency, that the company could not recognize any other union as the bargaining agent for any of its employees, unless with the approval of the union having the bargaining rights, or through action of the National Labor Relations Board.

So that the record may be clear, we are sending a copy of this letter to Local No. 2 I.W.A., at Aberdeen.

Very truly yours,

POLSON LUMBER COMPANY

F. A. Polson, Manager

FAP:jt

(Testimony of F. A. Polson.)

BOARD'S EXHIBIT NO. 4

Hoquiam, Washington,  
1940.

Mr. Arnold Polson, General Manager,  
Polson Logging Company and  
Ozette Railway Company,  
Hoquiam, Wash.

Dear Sir:

A majority of the Conductors and Brakemen and the Engineers and Firemen working in your train service have designated the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, respectively, as their representatives in collective bargaining under The National Labor Relations Act, and you are therefore requested to sign the attached Agreement with the Chairmen and Secretaries of the General Grievance Committees of the B. R. T. and B. L. F. & E.

Truly yours,

DAVE LYTLE

Chairman, Brotherhood of Railroad Trainmen's General Grievance Committee, 349 Cottage St., Hoquiam, Wash.

SAM KEY

Chairman, Brotherhood of Locomotive Firemen and Enginemen's General Grievance Committee. Box 193-B, Star Route #1, Hoquiam, Wash.

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

## AGREEMENT

It is mutually understood and agreed by and between the Polson Logging Company and/or Ozette Railway Company, and its logging Department train service employees, represented by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, respectively, that the following rules and regulations covering rates of pay, hours of employment and working conditions of all Conductors and Brakemen and all Engineers and Firemen in the employ of the logging department of the Polson Logging Company and/or Ozette Railway Company, shall be in effect on and after the . . . day of . . . , 1940, continuing until such time as this Agreement is amended or terminated by the parties hereto as provided for in Article XVII hereinafter set forth.

The term "Company" as used in this Agreement means the Polson Logging Company and/or Ozette Railway Company; the term "Trainmen" used in this Agreement means both Conductors and Brakemen; the term "Enginemen" used in this Agreement means both Locomotive Engineers and Firemen.

## ARTICLE I

### Rates of Pay:

(a) Rates of pay shown below shall govern for the class of service designated.



(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

	Rate Per Day	Pro Rata Hourly Rate	Time and One- Half Overtime Hourly Rate
Engineers .....	\$8.40	\$1.05	\$1.575
Firemen .....	6.80	.85	1.275
Conductors .....	8.00	1.00	1.50
Brakemen .....	7.20	.90	1.35

(b) Any Engineman required to hostle his engine before and/or after work day shall be allowed two (2) hours pay at his regular rate.

(c) In the event Diesel Electric, Oil Electric, Gas Electric, Electric Locomotive or other power is installed as a substitute for steam on the Company's logging railroad, an Engineer from the seniority list of Engineers and a Fireman from the seniority list of Firemen shall be employed on all such power used in woods and/or main line service; rates of pay to remain as on steam locomotives. This will not apply to speeder equipment.

## ARTICLE II

### Regular Hours and Overtime:

(a) Eight (8) hours or less on duty shall constitute a day's work for Trainmen and Enginemen coming under the provisions of this Agreement. Time after eight (8) hours on duty in a twenty-four (24) hour period shall be paid for on a minute basis at the overtime hourly rate of rate and one-half. Trainmen and Enginemen coming under the provisions of this Agreement shall be guaranteed not less than forty (40) hours per week, with Monday being the first day of each week.

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

(b) Trainmen or Enginemen called for service and not used shall be allowed two (2) hours time at their respective pro rata hourly rates.

(c) Trainmen will be placed on duty and be tied up as a unit.

### ARTICLE III

Beginning and Ending of Day:

(a) Trainmen and Enginemen shall have a designated point for going on duty and a designated point for going off duty.

(b) Pay of Trainmen and Enginemen shall commence at the time they are required to report for duty and shall continue until relieved from duty.

### ARTICLE IV

Runarounds:

(a) Available senior Trainmen and Enginemen who are not regularly assigned as such shall be called to fill vacancies in regular service and to man unassigned service for Trainmen and Enginemen at least one and one-half ( $1\frac{1}{2}$ ) hours before time required to report for duty, or as near thereto as practicable.

(b) Senior available Conductors and/or Brakemen and Engineers and/or Firemen who are not regularly assigned as such at the point in woods where vacancy or unassigned service for Conductor and/or Brakeman or Engineer and/or Fireman is to be manned, not called in turn, through no fault

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

of their own and who are not used as Conductor and/or Brakeman or Engineer and/or Fireman, within twelve (12) hours from the time runaround, shall receive four (4) hours' pay, and if not used as Conductor and/or Brakeman or Engineer and/or Fireman within twenty-four (24) hours from the time runaround, shall be paid eight (8) hours' pay. Senior available Conductors and/or Brakemen and Engineers and/or Firemen who are not regularly assigned as such in main line service at Railroad Camp, or in main line or woods service, not called in turn through no fault of their own and who are not used as Conductors and/or Brakemen or Engineers and/or Firemen, within twelve (12) hours from time runaround, shall receive four (4) hours' pay, and if not used as Conductor and/or Brakeman or Engineer and/or Fireman within twenty-four (24) hours from the time runaround, shall be paid eight (8) hours' pay.

## ARTICLE V

### Deadheading:

(a) Trainmen and/or Enginemen deadheading to an assignment and not used within twelve (12) hours of time crew is due to go on duty shall be allowed four (4) hours' pay; and if not used within twenty-four (24) hours, shall be allowed eight (8) hours' pay.

(b) Trainmen and/or Enginemen deadheading at the instance of the Company shall be furnished transportation by the Company.

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

## ARTICLE VI

### Seniority and Rights:

(a) Rights of Trainmen and Enginemen to preference of runs in their respective classes shall be governed by seniority. Seniority of Trainmen and Enginemen shall date from the first day of service with the Company.

(b) The status of Trainmen and Enginemen employed at the time of this Agreement shall remain unchanged except when future vacancies occur, at which time they will be filled in accordance with Paragraph (a) of this Article. The seniority list as at present carried by the Company will be officially accepted, subject to the approval of the Committees, with the understanding that each hired Engineer will have a seniority date as Fireman concurrent with his seniority date as Engineer and that Firemen failing in or refusing to take promotion as Engineers will rank on the Firemen's seniority list in their respective order as Firemen immediately behind the junior Engineer, but will remain senior to all Firemen their junior unless and until such junior Firemen become Engineers. It is further understood that each hired Conductor will have a seniority date as Brakeman concurrent with his seniority date as Conductor.

(c) A regular run or shift will be bulletined for seniority choice and the qualified senior bidder in each class will be assigned, provided, when it is



(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

known a new run going on is for five (5) days or longer, it shall be bulletined in advance and the senior applicant will be assigned at the time the service is instituted. All new or vacant runs will be bulletined for five (5) days, and if no bids are received, the junior qualified men will be assigned.

(d) Bulletins advertising runs will be posted on the Bulletin Board at the Dispatcher's Office at Headquarters Camp.

(e) Seniority of Trainmen shall be limited to their rights as Conductors and/or Brakemen, and seniority of Enginemen shall be limited to their rights as Engineers and/or Firemen.

(f) Temporary vacancies in regular service and in unassigned service will be filled as provided for in Article IV of this Agreement, but after a vacancy in regular service has existed for five (5) days or longer, the senior applicant applying for such vacancy shall be assigned thereto.

(g) All trains and locomotives shall be handled by available senior Trainmen and Enginemen.

## ARTICLE VII

### Time Slips and Limitation on Claims:

(a) Conductors shall file all time slips for the crews. Trainmen and/or Enginemen working alone shall make out their own time slips. In case of dispute as to proper allowance of time, Trainmen and Enginemen will be notified by the Timekeeper within five (5) days after time slips are received giving



(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

reasons for any and all disallowances. In cases where shortages appear after the employee has received his check covering services during the payroll period, and such shortages are verified, a voucher shall be issued in all cases where the shortage exceeds Five Dollars (\$5.00). If less than Five Dollars (\$5.00), it shall be allowed on the next payroll.

(b) All claims, of any character, arising by reason of alleged violation of any of the provisions of this Agreement must be presented to the Company within thirty (30) days from date of such violation or within thirty (30) days from the earliest date complainant could have had knowledge of same, and if not so presented, the Company shall not be liable for any penalty, remuneration or additional compensation covering the period prior to the date the claim is presented to the management.

## ARTICLE VIII

Attending Court:

Trainmen and/or Enginemen attending court or inquests under instructions from the Company will be paid the same compensation they would have earned had they remained on their regular assignment, plus fair living expenses when away from home, and under these circumstances the Company will receive the witness fees.

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

## ARTICLE IX

Increasing Forces — Decreasing Forces — Promotions:

(a) When reductions in forces are made, they shall be in the reverse order of seniority.

(b) Brakemen holding seniority as such with the Company will be promoted to Conductors, and Firemen holding seniority as such with the Company will be promoted to Engineers, before other Conductors or Engineers are hired. Seniority and competency shall be the governing factors in promotion. The Company shall be the judge of competency.

## ARTICLE X

Company Tieups:

Regular assigned crews will be tied up at a designated point. Other crews will be notified in advance as to point they will be tied up for the day.

## ARTICLE XI

Eating:

No deduction shall be made for time consumed by crews for meals while they are on duty. If called for service before meals are served, they shall be fed at the first available place, and if boarding in camp will not be required to work without having a hot meal before going on duty and after being tied up.

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

## ARTICLE XII

### Train Crew Limit:

(a) All trains of twenty-five (25) cars or less shall require not less than one (1) Conductor and one (1) Brakeman. Trains of more than twenty-five (25) cars shall require one (1) Conductor and two (2) Brakemen.

(b) Gravel trains shall require not less than two (2) trainmen, one of whom must be a Conductor.

(c) Train crews required to unload logs from cars equipped with top chains, shall have the services of a chain man, in addition to the regular train crew.

## ARTICLE XIII

### Investigations:

(a) Trainmen or Enginemen suspended or dismissed from service will, upon their request, be granted a thorough investigation by the proper official of the Company. Such request must be made within two (2) days after such suspension or discharge. Such investigation shall be held by the proper official of the Company within five (5) days after it has been brought to his attention and shall proceed with as little interruption as possible until completed.

(b) An employee being investigated may have the benefit of a representative of his own selection if he so desires.

(c) When transcript of testimony is taken at an

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

investigation General Chairmen will be furnished copy of same if requested.

(d) When a decision is rendered which the employee believes to be unjust, he may take up his case on appeal to the next higher official, which appeal must be made within fifteen (15) days. If the suspension or dismissal is proven to have been without just cause, the employee will be reinstated and paid for all time lost.

## ARTICLE XIV

Leave of Absence:

(a) Upon application, Trainmen and Enginemen may be granted reasonable leaves of absence provided that in the opinion of the Company their work can be carried on during the absent period. Such leaves of absence shall be limited to thirty (30) days except in case of injury or sickness. Such leaves of absence may be renewed at their expiration, if mutually agreeable.

(b) Any Trainman or Engineman having been granted leave of absence, who shall engage in other employment while on such leave or fail to report for duty and return to service at the expiration of said leave of absence, shall lose his seniority rights and privileges previously held. This rule shall not apply when laid off account reduction in force unless the employee fails to report to the Company for reemployment on proper notice by United States



(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

Registered Mail, except when prevented from doing so because of sickness or disability.

(d) Trainmen or Enginemen on the General Grievance Committees of their Organizations shall upon request be granted leave of absence to serve on such Committees when dealing with the Company.

(d) Trainmen or Enginemen accepting official positions with the Company or the Brotherhood of Railroad Trainmen or the Brotherhood of Locomotive Firemen and Enginemen, parties to this Agreement, shall retain seniority rights unimpaired.

## ARTICLE XV

Service Letters:

Any Trainman or Engineman, upon request, shall be given a service letter by the Company at the time of his leaving the service. Such letter shall state the capacity in which employed together with the cause for leaving.

## ARTICLE XVI

Adjustments of Grievances:

(a) The General Grievance Committee of the Brotherhood of Railroad Trainmen shall consist of train employees of the Company and shall represent all Conductors and Brakemen employed by the Company in its Logging Department; and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen shall consist of engine employees of the Company and shall repre-



(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

sent all Locomotive Engineers and Firemen employed by the Company in its Logging Department, in the making of Agreements and Contracts, rates, schedules, working conditions and interpretations thereof.

(b) All controversies affecting Conductors and Brakemen shall be handled in accordance with the interpretation of this Agreement as agreed upon between the General Grievance Committee of the Brotherhood of Railroad Trainmen and the Company, and any final settlement arrived at shall be binding upon the Company, the Brotherhood of Railroad Trainmen and the employee or employees involved.

(c) All controversies affecting Engineers and Firemen shall be handled in accordance with the interpretation of this Agreement as agreed upon between the General Grievance Committee of the Brotherhood of Locomotive Firemen and Engineers and the Company, and any final settlement arrived at shall be binding upon the Company; the Brotherhood of Locomotive Firemen and Engineers and the employee or employees involved.

## ARTICLE XVII

Change, Withdrawal or Termination Clause:

Any party or parties to this Agreement, separately or jointly, desiring to change, withdraw from or terminate same, must serve at least thirty (30) days' written notice in advance by United States Regis-

(Testimony of F. A. Polson.)

Board's Exhibit No. 4—(Continued)

tered Mail on the party or parties hereto, and such written notice will contain the change or changes desired, or the intention to withdraw from or terminate same.

In witness whereof, the parties to this instrument have executed the same, by their officers and agents hereunto duly authorized.

POLSON LOGGING COMPANY  
and/or OZETTE RAILWAY  
COMPANY

By .....

Manager

**BROTHERHOOD OF RAILROAD TRAINMEN**

By.....

Chairman, General Grievance Committee

By.....

Secretary, General Grievance Committee

**BROTHERHOOD OF LOCOMOTIVE FIRE-  
MEN AND ENGINEMEN**

By.....

Chairman, General Grievance Committee

By.....

Secretary, General Grievance Committee

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Q. (Mr. Walker:) Now, following that meeting at which the committee appeared, a little later, did Mr. Reece and Mr. Lytle cease to be employees of the company?      A. Yes. [17]

(Testimony of F. A. Polson.)

Q. (By Mr. Walker:) Mr. Polson, I hand you what has been marked as Board's Exhibit 5 and ask you what that is.

A. It is a separation report. I don't know whether it is exactly the same or not,——

Mr. Maxwell: Was that prepared in your office?

Mr. Walker: Yes.

Mr. Maxwell: From the state files?

Mr. Walker: Yes.

Mr. Maxwell: From the state file or from the company files?

Mr. Walker: The state files.

Mr. Maxwell: If that is an exact copy and it was made up in your office, I won't raise any objection on that; so I don't think it will be necessary to confuse the record.

The Witness: This particular one which you just handed me is a separation report of Clayton Reece.

Q. (By Mr. Walker:) Mr. Polson, what is the instrument which has been marked as Board's Exhibit 6 for identification?

Mr. Maxwell: The same is true of that one, Mr. Walker?

Mr. Walker: Yes.

A. That is a separation report of David Lytle.

Q. Did the employees Lytle and Reece cease their employment [19] on the date indicated on the instruments? A. I believe they did.

Trial Examiner Kent: And what was that date?

Mr. Walker: May 21, 1940.

(Testimony of F. A. Polson.)

Q. (By Mr. Walker:) Are the reasons set forth in each of the exhibits the company's assigned reasons for discharge in each instance?

Mr. Maxwell: I will object to that on the ground that the instruments speak for themselves. They have been admitted without objection on the part of the company, the respondent herein. It purports to be a copy of the report of the employer for the purpose of filling out this report,—

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Walker:) Who prepared Board's Exhibits 5 and 6?

A. These are your copies; you prepared them.

Mr. Maxwell: From the original?

Mr. Walker: Yes.

Q. (By Mr. Walker:) Who is Mr. Langabeer?

A. The accountant in charge of the payroll.

Q. Were Board's Exhibits 5 and 6 prepared under your direction?      A. Yes.

Q. Did you tell Mr. Langabeer what to set out?

Mr. Maxwell: Miss Langabeer.

Q. (Continuing) Did you direct Mr. Langabeer as to what [20] reasons for discharge to set out on the separation report?

A. Yes. The name is Miss Langabeer, not Mr.

Q. Are you the person who decided that Mr. Reece and Mr. Lytle be discharged?

A. No.

Q. Who did?

A. It was after a study was made of it.

Q. By whom?

(Testimony of F. A. Polson.)

A. By Mr. Ellingson, Mr. A. M. Polson, and myself.

Q. When was that study made?

A. After,—I have not the exact date of it.

Q. It was after May 21?

A. It was made prior to the separation report,—the investigation. I believe that is correct.

Q. I call your attention to the date upon which the separation report was made out,—They were both made out on the same date. I call your attention to the dates upon which they were made out and signed. A. Yes.

Q. And I call your attention to the dates upon which Mr. Lytle and Mr. Reece were discharged.

A. Yes.

Q. When was the investigation made with respect to the discharges of Mr. Lytle and Mr. Reece?

A. It was made right after the time of the,—right after [21] the date on which the reasons were given in the separation report, occurred.

Q. I don't quite understand that.

A. The investigation was made after the occurrence that led to the discharge.

Q. That is, you mean to say, the investigation was made right after May 21, 1940?

A. I am not sure of my dates on this, but it was around that time.

Q. Well, about how long after May 21, did the investigation take place?

A. It was right after it was reported to me.

Q. What was reported to you?



(Testimony of F. A. Polson.)

A. This case.

Q. A report was made to you on Mr. Lytle and Mr. Reece?      A. Yes.

Q. Who made the report?

A. Both Mr. Ellingson and Mr. Polson.

Q. Mr. A. M. Polson?

A. Yes, A. M. Polson?

Q. What did they report to you?

A. I didn't keep a record of the exact dates; it was right shortly afterwards.

Q. Where did they make the report?

A. It was right out at the camps. [22]

Q. Which camp?

A. Headquarters camp.

Q. That is also called railroad camp?

A. Yes, railroad camp.

Q. Now, did you study each individual's record from the report made to you, or each individual's case?

A. Mr. Ellingson told me about it.

Q. Was it the day following May 21 or two or three days after?

A. I couldn't say exactly.

Q. Well, it was along there somewhere?

A. It was in there very shortly.

Q. Now, when did the investigation take place?

A. It was out there.

Q. At camp?      A. At camp.

Q. At railroad camp?

A. Yes, at railroad camp.

Q. And when did the investigation take place?

(Testimony of F. A. Polson.)

A. When?

Q. With respect to the time of the report made to you by Mr. Ellingson?

A. Your question is not clear; I am sorry.

Q. Within a period of a day or two, either the day following May 21 or two or three days afterwards Mr. Ellingson reported [23] to you at Railroad Camp, is that correct; did he report that incident at that time, two or three days after May 21?

A. Somewhere around in there. I am not sure of the date.

Q. You have also testified that an investigation was made by yourself, Mr. A. M. Polson, and Mr. Ellingson on this matter?

A. Yes.

Q. When was that?

A. I don't know whether you would call it an investigation or an inquiry.

Q. When did you conduct the inquiry?

A. I asked questions.

Q. You conducted the inquiry?

A. Well, I asked questions.

Q. Of whom?

A. Of Mr. Ellingson.

Q. Anybody else?

A. No.

Q. And when did this inquiry, or your directing of questions to Mr. Ellingson, take place with respect to the time that Mr. Ellingson reported the incident to you?

A. When did it take place?

Q. Yes.

(Testimony of F. A. Polson.)

A. Your question is not clear.

Q. All right. Mr. Ellingson reported this incident concerning Reece and Lytle,—reported it to you out at Railroad Camp? A. Yes.

Q. And you have also testified that you asked some questions of Mr. Ellingson? A. Yes.

Q. Concerning this incident involving Lytle and Reece? A. Yes.

Q. When did you ask the questions of Mr. Ellingson or conduct your inquiry or your investigation, whatever you want to call it, with respect to the time when Mr. Ellingson reported the incident to you?

A. Why, I inquired right then.

Q. It all took place at the same time?

A. Yes.

Q. Who selected the reasons for the discharge of Mr. Clayton Reece and Mr. Lytle as are set out in Board's Exhibit 5 and 6?

Mr. Maxwell: I will object to that on the ground that it is repetitious. The form of the question is improper.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Walker:) Are you the only one who told Mr. Langabeer what to indicate on Board's Exhibits 5 and 6 as the reasons for the discharges of Mr. Reece and Mr. Lytle?

A. Yes. If I told them, it wouldn't be necessary for any- [25] body else. That is Miss Langabeer.

Q. You are the one that did tell her what to say? A. Yes. [26]

(Testimony of F. A. Polson.)

Q. (By Mr. Walker:) Mr. Polson, the safety rules provide for the safe operation of railroad property; is that correct?

A. And also the protection of the public.

Q. If there is involved unsafe operations that result in a violation of a safety rules; is that correct?

Mr. Maxwell: Just a moment. I will object to the form of the question on the ground that it is hypothetical.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Walker: That is agreeable with me if counsel will admit that the reasons assigned by the company are hypothetical.

Mr. Maxwell: Your question infers that. It is an improper question.

Trial Examiner Kent: Will you read the questions and answers, Mr. Reporter?

(Thereupon the questions and answers referred to were read as follows:)

“Question: Mr. Polson, the safety rules provide for the safe operation of railroad property; is that correct?”

“Answer: And also the protection of the public.

“Question: If there is involved unsafe operations that result in a violation of a safety rule; is that correct?”

Trial Examiner: Kent: Reframe your question.

(Testimony of F. A. Polson.)

Mr. Walker: Let me reframe that. [28]

Q. (By Mr. Walker:) If there is an unsafe operation of the railroad, that results in a violation of a safety rule; is that correct?

Mr. Maxwell: I will object to that as calling for a conclusion of the witness.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Walker:) Does unsafe operation of a railroad result in a violation of the safety rules?

Mr. Maxwell: I will object to the form of the question.

Trial Examiner Kent: The answer may be taken.

The Witness: Will you read the question, please?

(Thereupon, the pending question was read by the reporter as above recorded.)

A. Yes.

Q. Then, all in all, there is only one reason assigned by the company, and that is the violation of the safety rules; is that correct?

Mr. Maxwell: I will object to that as calling for a conclusion of the witness.

Trial Examiner Kent: Wait a minute.

Mr. Maxwell: It is also argumentative, Mr. Examiner.

Trial Examiner Kent: Read the question, Mr. Reporter.



(Testimony of F. A. Polson.)

(Thereupon, the pending question was read aloud by the reporter as above recorded.)

Trial Examiner Kent: The answer may be taken. I think your [29] objection can be covered by cross-examination afterwards.

A. The separation report gave the reasons for the discharge.

Mr. Walker: Will you read the question to the witness, Mr. Nelson?

(Thereupon, the question referred to was read aloud by the reporter as follows:)

“Question: Then, all in all, there is only one reason assigned by the company, and that is the violation of the safety rules; is that correct?”

A. I think the separation report covers that.

Mr. Maxwell: Mr. Examiner, may I interject a question. In the light of the question just asked and answered, that there is only one, do you mean that the company assigned for the immediate discharge this violation of the safety rules of May 21 by failure to flag the crossing in accordance with the safety rules?

Mr. Walker: Are you asking me?

Mr. Maxwell: Yes.

Mr. Walker: I don't know anything about it, I am trying to find out.

Mr. Maxwell: I want to get your meaning. I don't quite understand it myself.

Q. (By Mr. Walker:) Mr. Polson, it all comes

(Testimony of F. A. Polson.)

down to this, that the reason for the discharge of Mr. Lytle and Mr. Reece, as assigned by the company, is a violation of the safety rules; [30] is that correct?

Trial Examiner Kent: The answer may be taken.

A. The reasons given for the discharge were as in the separation report, a violation of the safety rules and/or unsafe operations.

Q. Yes, I can read, Mr. Polson.

Mr. Maxwell: Just a moment. That is improper.

Q. (By Mr. Walker:) But the use of the phrase, "and/or" is used in the report?

A. That is right.

Q. And the phrase, "and/or unsafe operations," is purely redundant,—

Mr. Maxwell: Just a moment.

Q. (Resumed) —excessive, and not necessary?

Mr. Maxwell: I will object to that as argumentative.

Trial Examiner Kent: At this meeting, at which Board's Exhibit 4 was delivered to you, who was the spokesman for the company? [31]

A. I was.

Q. Anybody else?

A. I believe I did most of the talking for the company.

Q. Were you the general manager of the Polson Logging Company in 1935? A. Yes.

(Testimony of F. A. Polson.)

Q. You recall an industry wide strike at that time?

Mr. Maxwell: I will object to that on the ground of immateriality, and as having no bearing on any issue in this case, and entirely too remote.

Trial Examiner Kent: When? In the 1935 strike? Was it 1935?

Mr. Walker: You are asking me?

Trial Examiner Kent: Yes.

Mr. Walker: Yes.

Trial Examiner Kent: What part of 1935? When?

Mr. Walker: It started on or about May 6, 1935, and concluded about August 14, 1935, I believe.

Trial Examiner Kent: The answer may be taken.

The Witness: Will you read the question, please?

(Thereupon, the last question was read aloud by the reporter as above recorded.)

A. When?

Q. (By Mr. Walker:) 1935?

A. Yes. [32]

Q. And did it begin on or about May 6, 1935; do you recall?

A. I don't recall the exact date it began.

Q. Were the operations of the Polson Logging Company—

Mr. Maxwell: (Interposing) May it be under-

(Testimony of F. A. Polson.)

stood that my objection goes to the entire line of questions?

Trial Examiner Kent: Yes.

Mr. Maxwell: Thank you.

Trial Examiner Kent: I might ask you a question. Was there any hearing concerning the present respondent arising out of the 1935 strike?

Mr. Walker: No, sir; there was not.

Trial Examiner Kent: It seems to me that this might be getting somewhat speculative; I think that would be a highly speculative matter to go into.

Mr. Walker: Well, I am not going to go far afield.

Trial Examiner Kent: If it is only a question or two, you may proceed, and I will entertain a motion to strike after the testimony is taken.

Q. (By Mr. Walker:) Were the operations of the Polson Logging Company involved?

A. To some extent.

Mr. Walker: I would like to have you mark this, Mr. Reporter, as Board's Exhibit No. 7.

(Whereupon, the document referred to was marked as Board's Exhibit No. 7, for identification.) [33]

Q. (By Mr. Walker): At the conclusion of the 1935 strike, was there a written instrument prepared? A. Yes.

Q. I hand you what has been marked as Board's Exhibit 7 for identification and ask you what this is.

A. I would say that that is along the general

(Testimony of F. A. Polson.)

lines of the settlement; whether it is the exact settlement, I don't know.

Q. Referring to Board's Exhibit 7, does it refresh your recollection that the 1935 strike began on or about May 6?

A. It began somewhere around that time; I don't know exactly when it did begin.

Q. And that it concluded on or about August 14, 1935?

A. It concluded about the middle of August.

Q. Now, did the Polson Logging Company post about its premises, instruments similar to or identical with Board's Exhibit 7 on or about the middle of August, 1935? A. I don't recall.

Q. Was the Polson Logging Company a party to the instrument, Board's Exhibit No. 7, along with other operators?

A. I can't identify this as being the exact settlement, but we made the same settlement as other operations did, generally.

Q. You made the same settlement?

A. Yes.

Mr. Walker: Will you mark this, Mr. Reporter, as Board's [34] Exhibit 7?

Q. (By Mr. Walker): Now, was there a labor dispute involving the Polson Logging Company in 1936? A. Yes, I believe there was.

Q. And did that conclude approximately on or about February 11, 1937?

A. It concluded in February.



(Testimony of F. A. Polson.)

Q. 1937? A. Yes.

Q. And at the conclusion of this dispute, were the terms of the same evidenced by a written instrument? A. Yes.

Q. Is what has been marked as Board's Exhibit 8 for identification a copy of the same?

A. I could not definitely identify that; it seems to be along the general lines.

Q. Between May 6, 1935, and February 11, 1937, were the employees of the company, who had membership in a labor organization, members of a local affiliated with the United Brotherhood of Carpenters and Joiners?

A. Will you reframe that question, please? [35]

Q. (By Mr. Walker): I mean, in the logging operations?

A. Well, I am not sure as to the nature or the extent of their affiliations.

Q. Were you so informed?

A. Well, it may have involved a switch at some time that I am not familiar with.

Q. I am just coming to that. Was the labor organization,—Strike that. Did your employees transfer their membership in the year 1937, and subsequent to February 11, 1937, become members of an organization known as the International Woodworkers of America?

A. There was a transfer; I don't know what the date of it was.

Q. Now, prior to the transfer were the logging

(Testimony of F. A. Polson.)

employees of the company in so far as you know, affiliated with the local chartered by the United Brotherhood of Carpenters and Joiners, an A. F. of L. affiliation?

A. I do not follow your question.

Mr. Maxwell: It is repetitious. The question has been answered once.

Trial Examiner Kent: The record may stand.

Q. (By Mr. Walker): Before the transfer to the I. W. A., were the logging employees, who had membership in a labor organization, so far as you know, members of a local chartered by the International Brotherhood of Carpenters and Joiners, an A. F. of L. organization? [36]

A. You mean, were they members of the A. F. of L. before they joined the C. I. O.? Is that the question?

Q. That is right.                      A. I believe so.

Q. Now, between August 14, 1935, and February 11, 1937, were there any other written instruments executed by the company and a labor organization among your employees?

A. Any written instruments?

Q. Yes.

A. No, that is, not written, as far as I can recall.

Mr. Walker: Will you mark this as Board's Exhibit 9, Mr. Reporter?

(The document referred to was marked as Board's Exhibit No. 9 for identification.)

(Testimony of F. A. Polson.)

Trial Examiner Kent: We will take a five-minute recess.

(Whereupon, a short recess was taken.)

Q. (By Mr. Walker): Mr. Polson, I hand you what has been marked as Board's Exhibit No. 9, for identification and ask you what that is.

A. Well, I am not sure that the wording is the same, but it is a general reaffirmation of some points that had been accepted verbally.

Q. Generally, is the instrument a copy of an arrangement entered into between the company and Local 3-2, I. W. A.?

Mr. Maxwell: I will object to the form of the question. [37]

Trial Examiner Kent: What is the answer?

Mr. Walker: It has not been answered.

Trial Examiner Kent: The answer may be taken.

A. Generally, it is a confirmation of a verbal understanding, reduced to writing.

Q. (By Mr. Walker): Between February 11, 1937, and June 21, 1940, were there any written instruments entered into between the company and a labor organization of its employees?

A. I don't recall that right now.

Q. Has the company entered into any other written instruments of any kind with any labor organization of its employees, other than Board's Exhibits 7, 8, and 9, for identification?

Mr. Maxwell: Within what period of time, Mr. Walker?

(Testimony of F. A. Polson.)

Mr. Walker: That runs from August 14, 1935, down to May 21, 1940.

Mr. Maxwell: The 21st?

Mr. Walker: The 21st. I mean, up to that date?

A. Yes, there are other agreements.

Q. Well, then, let us break it up; has the company entered into any written instruments of any kind with any labor organization of its own employees other than Board's Exhibits 7, 8, and 9, between the dates of August 14, 1935, and June 21, 1940?

Mr. Maxwell: I will object to the form of the question [38] as being too general. If counsel has some subject specifically in mind, it would expedite the matter if he would refer to it specifically.

Trial Examiner Kent: The answer may be taken.

A. Yes, there are other agreements.

Q. (By Mr. Walker): Since June 21, 1940, has the company entered into any written agreements of any kind with any labor organization of its own employees? A. Yes.

Mr. Walker: May we go off the record?

Trial Examiner Kent: Off the record.

(There was a discussion off the record.)

Trial Examiner Kent: On the record.

Q. (By Mr. Walker): Was the Carpenters and Joiners, the A. F. of L. organization that represented your employees, an industrial type of organization? A. I would presume so.



(Testimony of F. A. Polson.)

Q. Did it represent all types of the company's employees except, of course, supervisory and office employees? A. The question is not clear.

Mr. Maxwell: You mean, were they members; is that what you are getting at?

Q. (By Mr. Walker): Were all types of the company's employees either represented by or had membership in the A. F. of L. Local, except, of course, the supervisory and office force? [39]

A. That is not clear to me.

Mr. Maxwell: Mr. Examiner, I would like to raise any objection to the form of the question. Perhaps if we could go off the record we could clarify it.

Trial Examiner Kent: Yes, off the record.

(There was a discussion off the record.)

Mr. Walker: Will you read the last question, Mr. Reporter?

(Thereupon, the question was read aloud by the reporter as above recorded.)

Trial Examiner Kent: Well, was there a contract? Wouldn't that cover it?

Mr. Walker: There was a contract.

The Witness: I am still somewhat confused. I think your question is a little bit vague.

Q. (By Mr. Walker): Wherein are you confused, Mr. Polson?

A. I couldn't specify,—I don't know what was required regarding membership, or how many men



(Testimony of F. A. Polson.)

did belong to the different labor organizations; I have not gone through their books or audited them; I think they could present that testimony.

Q. You had dealings with the local representing the Carpenters and Joiners, didn't you?

Mr. Maxwell: That is 1935 to 1937?

Mr. Walker: That would be the period. [40]

A. I presume so; through our own men or through their representatives.

Q. (By Mr. Walker): And what did the representatives of your own men tell you? What did they tell you as to what group of employees they purported to represent?

A. They purported to represent them all.

Q. All types of employees?

A. All types that were entering into negotiations.

Q. I beg your pardon?

A. All types, that is, generally all types of employees, yes; I think that covers it. You will notice some exceptions.

Q. Excepting supervisory and office force?

A. Yes.

Q. Excepting those, all types of employees were purported to be represented by the Carpenters and Joiners Local?      A. Yes.

Q. And is Local 2, I. W. A., an industrial type of organization?      A. I believe so.

Q. And does it purport to represent all types of your employees, excluding, of course, the supervisory and office employees?

(Testimony of F. A. Polson.)

A. I believe so.

Q. You appeared in the Representation hearing held December [41] 16 and 17, 1940, in XIX-R-538, and XIX-R-539?

A. Those numbers don't mean much to me. I was present at a hearing.

Q. I see. You did appear at the hearing?

A. Yes.

Q. Has the company at all times preferred to deal with an industrial type of labor organization?

Mr. Maxwell: I will object to the form of the question. It has no bearing upon any issue here.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Walker): At that hearing, did you express, as the company's opinion, the desirability of dealing with an industrial type of labor organization?

Mr. Maxwell: I will object to the form of the question. The issue is not an industrial type of organization, but that of a bargaining unit.

Trial Examiner Kent: Was there a Board order issued in that proceeding?

Mr. Walker: Yes.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Walker): At that hearing, December 16 and 17, 1940, in Hoquiam, did you, as the company representative, express as the company's opinion the desirability of dealing with an industrial type of organization and through an industrial type of unit? [42]

(Testimony of F. A. Polson.)

Mr. Maxwell: I will object to the form of the question. And also, may it be understood that my objection runs as to the merits and relevancy of this line of questions. I want a general objection to this whole line. [43]

Trial Examiner Kent: Reframe your question.

Mr. Walker: I will withdraw the question, in view of the discussion which took place off the record, and in lieu thereof I ask that the Board take judicial notice of the testimony given by Mr. F. A. Polson on December 16, 1940, at Hoquiam, in consolidated cases XIX-R-538 and XIX-R-539, beginning with line 20 on page 88 of the official transcript [44] down to and including line 17 on page 90; also, from line 19 on page 94, down to and including line 18 on page 95; and from line 4 on page 110, down to and including line 19 on page 111.

Mr. Maxwell: That is a left-handed way of putting the testimony in. I will object to counsel's statement.

Trial Examiner Kent: You mean that you are offering this in the record, those pages of testimony?

Mr. Maxwell: I don't understand it to be an offer of the testimony. He is asking the Board to take judicial notice of that testimony.

Trial Examiner Kent: In citing certain pages?

Mr. Maxwell: Yes. If he wants to make an offer of proof by submitting certain pages rather than tearing them out,—

(Testimony of F. A. Polson.)

Trial Examiner Kent: You are asking that it be considered by reference?

Mr. Walker: That is right.

Mr. Maxwell: If he wants to make that as an offer, that is another matter.

Trial Examiner Kent: Well, I will treat it as an offer of proof, and deny the offer at this time. In other words, you may renew your offer and have it considered in connection with other testimony, if you desire, later, if the situation at that time warrants. [45]

Mr. Maxwell: Do you recall the date, Mr. Polson, that Board's Exhibit 4 was presented to you by your employees, or a committee of your employees, which you testified to?

The Witness: It was presented, but it was not dated.

Mr. Maxwell: Do you recall the date it was brought in, or approximately?

The Witness: No, I don't know.

Mr. Maxwell: Do you recall approximately?

The Witness: No; it was in May.

Trial Examiner Kent Prior to the discharge?

The Witness: The meeting was prior to the discharge?

Trial Examiner Kent: Yes.

The Witness: Yes.

Mr. Walker: That is all the questions I have. I now offer in evidence what has been marked as Board's Exhibits 5, 6, 7, 8, and 9, together with the duplicates thereof.



Mr. Maxwell: We will object to the introduction and receipt in evidence of Board's Exhibits 7, 8, and 9, upon the ground and for the reason that said exhibits are immaterial and irrelevant to any issue involved in this case, the same exhibits being, or purporting to be, a settlement of the 1935 industry-wide strike. The basis of the settlement entered into on the 11th day of February, 1937, allegedly a settlement of some strike in the early part of 1936 and the first part of 1937; and Board's Exhibit 9 being an agreement affirming an oral agreement that had existed between the company and Local 2 of the I. W. A., at the date of its entry. [47] Further, with respect to Board's Exhibit 7, those matters have no bearing upon the issue, and they are too remote. May we go off the record?

Trial Examiner Kent: Well, there is some materiality in them to show the history of labor relations. My recollection of the testimony is that I don't think they are properly identified. I am referring to Exhibit No. 7 and Exhibit No. 8. [48]

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### BOARD'S EXHIBIT No. 5

S. F. No. 5334—1938—25M—5474-A

State of Washington

Unemployment Compensation Division

Olympia, Washington

### SEPARATION REPORT

1. Name of Worker Clayton Reece S. S. A. No. 535-10-9103
2. Date of Separation May 21 1940



3. Wages in lieu of notice from ....., 19...., to .....,  
19.... \$.....

4. Reason for separation (check one):

- (-) Quit work voluntarily without good cause.
- (x) Discharged for misconduct connected with work.
- (-) Other reason.

Remarks: Reason for discharge: Violation of safety rules  
and/or unsafe operation.

I (we) certify that the information furnished is true and correct and that the above named worker was separated from employment on the date shown above and for the cause checked, which I (we) believe may disqualify him.

Employer Name — Polson Logging Company, U. C. No.  
85 994 04728 00

Address—Hoquiam, Washington

Place of employment if different from address of employer—  
Certified correct by

/s/ B. LANGABEER

Title: Supt. Soc. Sec. Dep't.

Date Signed: 6/15/40

Instructions to Employer

Mail original and duplicate immediately to nearest Washington State Employment office. Give triplicate copy to worker. Retain fourth copy for your file.

Always give the worker the printed form, "How to Apply for Benefits", when he leaves your employ, regardless of reason for such separation.

Triplicate—Claimant's Copy.

BOARD'S EXHIBIT No. 6

S. F. No. 5334—1938—25M. 5474-A

State of Washington  
Unemployment Compensation Division  
Olympia, Washington

SEPARATION REPORT

1. Name of Worker Dave Lytle S. S. S. No. 531-03-6102.
2. Date of separation May 21, 1940.
3. Wages in lieu of notice from....., 19....., to.....  
19....., \$.....
4. Reason for separation (check one):
  - ( ) Quit work voluntarily without good cause.
  - (x) Discharged for misconduct connected with work.
  - ( ) Other reason.

Remarks: Reason for discharge: Violation of safety rules and/or unsafe operations.

I (we) certify that the information furnished is true and correct and that the above named worker was separated from employment on the date shown above and for the cause checked, which I (we) believe may disqualify him.

Employer Name—Polson Logging Company, U .C. No. 85 994 04728 00

Address—Hoquiam, Washington

Place of employment if different from address of employer—

Certified correct by

/s/ B. LANGABEER

Title: Supt. Soc. Sec. Dept.

Date Signed: 6/15/40

Instructions to Employer

Mail original and duplicate immediately to nearest Washington State Employment office. Give triplicate copy to worker. Retain fourth copy for your file.

Always give the worker the printed form, "How to Apply for Benefits", when he leaves your employ, regardless of reason for such separation.

Triplicate—Claimant's Copy.

## BOARD'S EXHIBIT No. 9

(Copy)

## MEMORANDUM OF AGREEMENT

The Polson Logging Company hereby reaffirms recognition of Local No. 2, I. W. of A., as the sole collective bargaining agency for all its employees, excepting superintendents, foremen, timekeepers, bull-buckers, civil engineers, check scalers, office employees and the boommen who are members of the I. W. of A. and who are under a separate contract.

Local No. 2, I. W. of A., and the Polson Logging Company mutually agree to maintain present conditions of employment until these are changed, either in proposed joint negotiations or in negotiations between Local No. 2, I. W. of A., and the Polson Logging Company.

Dealing for collective bargaining between the Polson Logging Company and Local No. 2, I. W. of A., shall continue to be through a committee of the employees of the Polson Logging Company, with the assistance of anyone they desire.

Signed at Hoquiam, Washington, June 21, 1940.

For the Union

Local No. 2, I. W. of A., by  
H. I. TUCKER,

Pres.

DENEE DYER,

Bus. Agt.

KALIS HECK,

JOE BRANT,

LESTER WALKER,  
WM. E. ANDERSON,  
GEO. TURNER.

For the Company  
POLSON LOGGING CO.,  
By F. A. POLSON.

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DAVE LYTTLE

was called as a witness on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker: [49]

Q. What is your occupation?

A. At the present time?

Q. No.           A. Brakeman.

Q. Have you ever been employed by the Polson Logging Company?           A. I have.

Q. When did your employment there begin?

A. In the fall of 1934.

Q. At what type of work?

A. What do you mean?

Q. At what type of work did you begin your employment there?

A. I first began as a brakeman.

Q. At any time after that, was there any change in the status of your employment as a brakeman?

A. I started in as a second brakeman. I worked at that for a short time and then was promoted to head brakeman.

(Testimony of Dave Lytle.)

Q. About how long?

A. I don't know exactly, but I think it was about three weeks.

Q. How long did your employment there at the Polson Logging Company continue?

A. My employment continued until the fall of 1937. [50]

Q. And what occurred at that time?

A. I quit.

Q. Did you after that ever return to the Polson Logging Company?

A. Yes, I did; I was off for two weeks, and I was requested to go back.

Q. What do you mean by that?

A. Why, the train master, Bill Gordon, came down and wanted me to go back.

Q. And did you?      A. I did.

Q. When you returned, at what work did you return?

A. I returned as head brakeman.

Q. And then how long did you work there? How long did your work continue after that?

A. I worked there until, let's see, I don't know just exactly how long, but the camp was down,—I think, usually, that camp was down.—It was in the fall of 1937 when those camps shut down.

Q. And did the camps resume operations at sometime after the fall of 1937?      A. Yes.

Q. When?



(Testimony of Dave Lytle.)

A. If I remember right, it was in the fall of 1938 when I was called back. [51]

Q. Who called you back?

A. Mr. Ellingson.

Q. At what job? A. Brakeman.

Q. Did you go back? A. I did.

Q. How long did you work there then?

A. Until May 21, 1940.

Mr. Maxwell: I will object to that as immaterial. What happened in 1934 has no bearing upon any issue in this case.

Trial Examiner Kent: I think it is remote; I don't think it has any material bearing on the issue.

Mr. Walker: Except, Mr. Examiner, the only purpose I have of offering any testimony of this nature is to show the extent of this man's experience in railroading.

Trial Examiner Kent: Well, the question, I imagine, will be brief; two or three questions will cover it, will they not?

Mr. Walker: Yes. [52]

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Walker:) When did you first begin railroading?

Mr. Maxwell: It is understood that my objection goes to the entire line.

Trial Examiner Kent: Yes, you may have an objection to the entire line.

A. In 1913.

Q. (By Mr. Walker:) From 1934 to May 21,

(Testimony of Dave Lytle.)

1940, had you ever done any other type of work than railroading?

A. Oh, during the slack times and during the depressions there, off and on; practically none, no.

Q. Whenever there was work available railroading, did you do any other kind of work from 1913 until May 21, 1940? A. No, I did not.

Q. Are you a member of any labor organization?

A. I am.

Q. And what organization?

A. Brotherhood of Railroad Trainmen.

Q. How long have you been a member of that?

A. Since 1917.

Q. In the year 1940, was there an organizational effort made by the Brotherhood of Railroad Trainmen among the employees of the Polson Logging Company? A. There was.

Q. And when did that begin? [53]

A. It began along in February.

Q. What year? A. 1940.

Q. And how did it come about?

A. Well, the engine men and trainmen were both dissatisfied under the present set up, and they figured they could do better in their own organization, and they knew that I had been a trainman for a long time.

Q. Who did?

A. The employees. And they wanted to know if I had any idea the Brotherhood would take them in. I told them I didn't know, but I would find out;

(Testimony of Dave Lytle.)

and that is what I did. I wrote to the secretary of our lodge, No. 403, at Tacoma, Washington.

Q. What was done along the line of organizing the Brotherhood?

A. I wrote to our secretary, and he wrote to our president in Cleveland, Ohio, and he told me that if the trainmen would all join the Brotherhood, that he was satisfied that we could work out an agreement or negotiate for an agreement.

Q. Well, did you do anything toward organizing the employees into the Brotherhood?

A. I did.

Q. What did you do?

A. I got the application blanks.

Q. What kind of application blanks? [54]

A. The membership application blanks.

Q. From whom did you get them?

A. From the secretary of our Tacoma Lodge.

Q. What did you do with them?

A. I circulated them amongst the trainmen,—the brakemen.

Q. About when was that?

A. I started in February, 1940.

Q. Where did you do it?

A. Some I did out there on the job; some at home; some at the camp and the house; and some at the meetings down town.

Q. Was there anything done in connection with further organizing after you had obtained the signatures and application cards? The signatures to the application cards? A. Yes.

(Testimony of Dave Lytle.)

Q. What did you do next?

A. We had to get the authorization blanks authorizing the Brotherhood to represent the members in negotiations.

Q. And who did that? A. I did.

Q. When did you do that?

A. I did that,—I believe it was in April.

Q. Where did you do it?

A. I did it about the same as the applications,—some at the job, some at the house, and some at the meetings.

Q. Following the securing of the authorization blanks, is [55] there anything else that you did?

A. Yes.

Q. What was the next step?

A. The next step was to draw up our agreement.

Q. Was that done?

A. Yes, that was done.

Q. After the form of agreement was drawn up, was anything next done?

A. Then we formed a letter to Mr. Polson.

Q. Was that done?

A. Yes, that was done.

Q. After preparing a letter and a form of agreement, was anything next done? A. Yes.

Q. What?

A. After it was taken down and handed to Mr. Polson,—it was taken down and handed to Mr. Polson.

Q. Who did that? A. The committee.

(Testimony of Dave Lytle.)

Q. Who was on the committee?

A. Well, the same——

Q. Were they same individuals Mr. Polson mentioned?

Mr. Maxwell: Let him answer.

Mr. Walker: Oh, it doesn't make any difference.

A. Sam Key, Lawrence Brant for the engineers; Clayton Reece, [56] W. J. Williams, and myself for the trainmen.

Q. Where was that meeting?

A. That meeting was down in the Polson Building in Hoquiam.

Q. What did you call it?

A. Down in the Polson Building in Hoquiam.

Q. When was that?

A. That was May 18, 1940.

Q. About what time of day?

A. Well, eleven o'clock in the morning.

Q. Who did the committee meet with?

A. Arnold Polson.

Q. Who else?

A. Bennett Ellingson and A. M. Polson.

Q. How long did the meeting last?

A. About half an hour.

Q. What occurred at that meeting?

A. Well, I handed Mr. Polson the agreement, with a letter and told him that the committee would like to negotiate with him.

Q. How did that meeting come about?

A. It came about that I went down, I think it was Thursday,—I am not exactly positive on that.



(Testimony of Dave Lytle.)

Q. What Thursday?

A. Thursday of the same week in 1940; that would be May 16.

Q. Where did you go on that Thursday? [57]

A. I went to Mr. Polson's office.

Q. Did you see anybody there?

A. I asked to see Mr. Polson.

Q. Did you see him?

A. Yes, Mr. Polson saw me.

Q. Was the meeting of the 18th arranged as a result of that?      A. Yes, it was.

Q. Will you go ahead and describe what occurred at the meeting of the 18th?

A. I handed Mr. Polson the agreement, with a letter, and told Mr. Polson we would like to negotiate with him; and Mr. Polson looked at the agreement,—looked the agreement over and read the letter, and he said he could not sign right at the present time; that he wanted a few days to take it to his lawyer and let his lawyer look it over. He said he was not in the habit of signing anything without personally first knowing what it was.

Q. Did anybody say anything to that?

A. And he wanted to know why we were pulling out of the I.W.A., and he said he thought we would be better off by staying in the I.W.A. and not splitting it up, as he was running a logging camp and not running a railroad; that he thought one union would be better than two; that two would probably give us a jurisdictional dispute.

(Testimony of Dave Lytle.)

Q. Now, did you say that Mr. Key and Mr. Brant were there? [58]

A. Yes, Mr. Sam Key and Mr. Brant were there.

Q. Did Mr. Polson say anything further at that meeting?

A. Mr. Polson wanted to know why some of them were pulling out of the I.W.A.

Q. Who?

A. Well, Mr. Brant and Mr. Key had served on committees of the I.W.A.; and they told him that they thought their interests would be better served by an organization of their own.

Q. (By Mr. Walker:) Did Mr. Key and Mr. Brant say anything further?

A. Mr. Key and Mr. Brant told him that they thought they would be better off in the Brotherhood; that they had joined the Brotherhood and that they wanted the Brotherhood to represent them.

Q. Did Mr. Polson say anything to that?

A. Mr. Polson said he thought they were making a mistake.

Q. Was there any other discussion at that meeting between any of the members of the committee representing the employees and any of the members of the committee representing the company?

[59]

A. No; Mr. Polson was the spokesman.

Q. What next took place at the meeting after the discussion between Mr. Key, Mr. Brant, and Mr. Polson?

(Testimony of Dave Lytle.)

A. Well, we had a meeting scheduled for 11:30, and Mr. Polson refused to sign our agreement; so we terminated our meeting there, and I asked Mr. Polson for an answer to our letter.

Q. What did you say to him?

A. I told Mr. Polson, "You be sure to give us a written answer to our letter." And he said, "I will." [60]

Q. After he said that, was there anything more at that meeting?

A. Anything more to the meeting?

Q. Yes. [61]

A. No; our meeting was terminated.

Q. What did the members of the committee then do? A. We went back to our meeting.

Q. Where were you during the course of this meeting? A. We were in Mr. Polson's office.

Q. Where in his office?

A. In the small office, off the main office,—a small room off the main office.

Q. Was there a table in there?

A. Yes, there was a table in there.

Q. Were you fellows seated around the table?

A. We were seated on each side of the office, and I believe Mr. Polson was seated at the table.

Q. (By Mr. Walker): At some point in the meeting did the committee then get up from their chairs? [62]

A. They got up when they started to go out the door.

(Testimony of Dave Lytle.)

Q. Did anything occur? A. When?

Q. Just before the committeemen went out the door?

A. Just as we went out the door, I again reminded Mr. Polson of a written answer to his letter.

Q. What did you say?

A. I said, "Be sure to give a written answer to our letter."

Q. Did Mr. Polson say anything to that?

A. He said, "I will; and don't forget what I have told you." [63]

Q. (By Mr. Walker) Did Mr. Polson accompany his statement of "Remember what I told you" with anything? A. Yes; with a dirty look.

Mr. Maxwell: Well, I object to that.

Trial Examiner Kent: Well, "dirty look,"—What do you mean by "dirty look"? Do you mean that he looked angry, or what do you mean?

The Witness: Well, he looked like he didn't like it. [64]

Q. (By Mr. Walker) Now, when that occurred, that you have just now described, where were the other members of the committee?

A. They were just ahead of me, and out on the sidewalk.

Q. Did you work the following day?

A. The following day was Sunday; that was the 19th. We did not work that day.

Q. Did you work the following Sunday?

A. The following Sunday? No.



(Testimony of Dave Lytle.)

Q. I mean, did you work the day following Sunday?

A. The day following Sunday was Monday; that was May 20.

Q. Did you work that day?

A. Yes, we worked that day.

Q. At the conclusion of that day's work, what did you do?

A. We always went over and took oil at the locomotive camp, and then we went over to the board to see if we were marked up the next day, and then we went home.

Q. At the conclusion of your work on May 20, did you look at the call board? A. Yes.

Q. You did? A. Yes.

Q. What did you find?

A. We were marked down for Tuesday morning at 5:20. [65]

Q. Five-twenty in the morning? A. Yes.

Q. Did you work on Tuesday? A. We did.

Q. What time did you go to work that day? What time did your work begin that day?

A. Well, five o'clock.

Q. Did you go to work on that day?

A. We did.

Q. At the conclusion of Tuesday, May 21, what did you do?

A. At the conclusion of May 21, what did we do?

Q. Yes, what did you do at the end of that day?

A. At the conclusion of May 21?



(Testimony of Dave Lytle.)

Q. Yes.

A. We came in and looked at the board.

Q. Where is the board?

A. It is up on the wall at the office.

Q. Where? A. At the Railroad Camp.

Q. You looked up on the board, and what did you find?

A. We looked up on the board. There was two crosses back of my name, and a cross back of my brakeman's name,—

Q. Who was your brakeman? Your second brakeman? A. Clayton Reece.

Q. Had he worked with you on that day? [66]

A. He had.

Q. Now, did you do anything when you saw that?

A. I didn't pay any attention to it. I asked the train master what run we were going to go on tomorrow.

Q. Did he answer you? A. Yes.

Q. What did he say?

A. He said, "Tomorrow is your day off." And then he said, "You are not going to work any more until you see Bennett Ellingson."

Q. What did you say?

A. I asked him why I should see Bennet Ellingson, and he said we were in the "dog house." I said, "In the dog house for what?" He said, "For not flagging the crossing." I said, "What crossing do you mean?" and he said, "The Axford Prairie."

(Testimony of Dave Lytle.)

Q. Did the train master tell you the "Axford Crossing"? A. Yes.

Q. Was there any more conversation?

A. We discussed it.

Q. What did he say about the Axford Crossing?

A. He said we were in the dog house for not flagging the Axford Crossing.

Q. What did you say?

A. I told him we crossed that crossing the same as always.

Q. Did he say anything further to that? [67]

A. He said Ellingson was pretty mad.

Q. Did you see the train master the morning of the 21st? A. I did.

Q. And where did you see him that morning?

A. I saw him at Railroad Camp.

Q. Where at Railroad Camp?

A. He always come down,—He came down to the dispatcher's office, in the main office. The dispatcher is in the main office.

Q. Now, did the dispatcher that night, May 21, state anything about having seen Mr. Ellingson that morning? A. Yes.

Q. You talked with him about it? A. Yes.

Q. He stated he had seen Ellingson the morning of May 21?

Mr. Maxwell: Leading.

A. He did.

Q. What did he say?

A. He said that Mr. Ellingson was back there before he got his shoes tied up that morning.

(Testimony of Dave Lytle.)

Q. Before who got his shoes tied up?

A. The dispatcher.

Trial Examiner Kent: What is the dispatcher's name?

A. George Grosclose.

Q. (By Mr. Walker): Now, where was Mr. Reece at that time? [68]

Mr. Maxwell: What time?

Q. (By Mr. Walker:) Did Mr. Reece come in with you that evening? A. He did.

Q. And what did Mr. Reece do when you came in there that evening? Do you know?

A. Mr. Reece came in and looked at the board.

Q. Now, did you see Mr. Ellingson at any time after May 21, or did you have a conversation with him?

A. I was told by the train master or dispatcher,—he was acting in the capacity of both,—that I would have to see Mr. Ellingson before I worked again. So, Wednesday, May 22, I called at the camp trying to get in touch with Mr. Ellingson.

Q. What camp? A. Railroad Camp.

Q. Go ahead.

A. I was told that Mr. Ellingson was up at one of the other camps; they didn't know just when he would be back. I said I would call later. So, later, I called Mr. Ellingson's house, and Mr. Ellingson said, "I can't see you today," or "I won't see you today." Then he said, "I will see you Saturday."

Q. Did you? A. I did. [69]

(Testimony of Dave Lytle.)

Q. What happened?

A. That was on Saturday, about ten o'clock in the morning.

Q. Where? A. In Mr. Polson's office.

Q. Where? A. In Hoquiam.

Q. Did you have a talk with him that morning?

A. Yes.

Q. What happened?

A. I asked him why I had been laid off, and he said, "For not flagging Axford Prairie Crossing."

Q. Did you answer him? A. Yes.

Q. What did you say?

A. I said, "It has never been flagged."

Q. What did he say?

A. He didn't say very much; but I said, "You can't flag that crossing without stopping the train and going ahead to flag it."

Q. What did he say to that?

A. He said, "I don't want you to stop."

Q. Did you say anything?

A. I said it could not be flagged otherwise.

Q. Did Mr. Ellingson say anything to that?

A. Mr. Ellingson said, "You don't have to stop. I want you [70] to flag it from the point of the car."

Q. And was there any more conversation at that time? A. Yes.

Q. What was it?

A. I told Mr. Ellingson that it didn't do any good to stand at the point of the car, that if he flagged from the back of the car, or back by the

(Testimony of Dave Lytle.)

dog house, as well as he could,—that he could flag from the dog house as well as he could from the point of the car, and that the brakeman and engineer and fireman could see from the locomotive just as well as they could back there, or the brakeman could from the point of the car.

Q. Did Mr. Ellingson say anything further to that?

A. He said, "You are in the dog house."

Q. Did you say anything to that?

A. No, not at that moment.

Q. That was all?

A. No. I asked him why he was laying Reece off.

Q. What did he say to that?

A. He said, "The same as you are laid off for." I said, "Am I fired?"

Q. What did he say?

A. He said, "I will let you know later."

Q. What did you say?

A. I said, "When?" and he said, "Monday." He said, "I have [71] got to see Arnold,—Mr. Arnold Polson,—first."

Q. Now, which Saturday was this that you had this conversation with Ellingson?

A. The one immediately after.

Q. The one immediately after the 21st?

A. The one immediately after the 21st.

Q. Have you related all the conversation that took place that Saturday afternoon at Mr. Polson's office between yourself and Mr. Ellingson?



(Testimony of Dave Lytle.)

A. Mr. Ellingson said he had to see Mr. Polson before he could give me an answer, and that he was taking his orders from Mr. Polson; that Mr. Polson had sent him out to watch that crossing.

Q. Did you say anything to that?

A. I told him, "O. K."

Q. Was there anything more to that conversation?

A. I said, "You will let me know Monday?" and he said, "Yes."

Q. Was there anything else?

A. That is all there was to it.

Q. Did you see him Monday? A. I did not.

Q. Did you see him at any time again before Saturday, May 25?

A. I saw him a few times on the street.

Q. I mean, again at any time after May 25, in connection with your conversation at that time? [72]

A. No; I have never seen him since.

Q. When did you get your termination slip?

A. Termination slip?

Q. The slip showing that you had terminated your services with the company? When did you get that?

A. I got that along in June.

Q. At approximately the date it bears there?

A. I believe it was after that date. I had to go and call for it. I didn't know there was any such a thing as that until I went to the Unemployment office.

(Testimony of Dave Lytle.)

Q. Was the letter and form of agreement to which you referred in your testimony, which is marked as Board's Exhibit 4 for identification,—

A. Those are the ones which were handed to Mr. Polson by the committee.

Q. Now, before this meeting at Mr. Polson's office on May 18, had you had a talk at any time with Mr. Ellingson about a labor organization or labor organizations?

A. Not that I recall.

Q. Have you ever worked on the gravel train?

A. I have.

Q. Hauling gravel?

A. Yes.

Q. About when did you do that?

A. Different times. [73]

Q. Last preceding May 18, when was the last time preceding May 18?

A. It was along in April, I believe; I am not sure of that, because there was different stretches of that.

Q. At any time while you were engaged on the gravel train, did you have a conversation with Mr. Ellingson?

A. Well, you couldn't call it a conversation; it was just Mr. Ellingson asked me,—he said that he had heard we were going into the Brotherhood.

Q. (By Mr. Walker:) Mr. Ellingson asked you what?

A. If we were going into the Brotherhood. I was standing on the gangway of the locomotive at that time; we were both stand- [74] ing there; the

(Testimony of Dave Lytle.)

locomotive was running. And I told him that we were,—that most of us belonged, and that I had belonged for a long time. That is all the conversation there was.

Q. Now, at any time before May 25, did you ever receive any instruction concerning the manner in which you were to carry out your job as conductor? A. From Ellingson?

Q. From Mr. Ellingson or Mr. F. A. Polson or Mr. A. M. Polson? A. I never had.

Q. (By Mr. Walker:) At any time prior to May 25, 1940, were there any printed or posted rules concerning the manner of operating the Polson trains in operation?

A. There was only one posted rule.

Q. And what was that?

A. Regarding low trucks in motion.

Q. And what was that rule?

A. It said, "Don't set or release brakes on low trucks while train is in motion."

Q. Prior to May 25, 1940, had you ever been told to flag the train from the front end of the car while crossing crossings? [75]

A. I never had.

Q. Had Mr. Ellingson ever ridden on your train with you? A. He had.

Q. Where?

A. He usually rode, sometimes on the flat car and sometimes in the dog house.

Trial Examiner Kent: I think this a good time

(Testimony of Dave Lytle.)

to explain what is meant by "dog house." I think that word has been used in another sense prior to this, and I think perhaps it has a different sense in this connection. This would be a good time to have that made clear on the record.

Q. (By Mr. Walker:) What is the dog house?

A. That is a little shanty that is built on a flat car; that is about eight feet long. It is about eight feet long and six feet wide.

Q. (By Mr. Walker: ) When Mr. Groschlose referred to you being in the dog house, what was he referring to?

A. He was just referring to the fact that I was in bad with Mr. Ellingson.

Q. Where were you at these times when Mr. Ellingson was riding in the shanty; let us call it that, so we won't get it mixed up with the same words which have another meaning. [76]

A. I was in the shanty, where he was a part of the time, and a part of time he was out on the flat car. A part of the time I was out on the flat car.

Q. Were there any instances previous to May 21, 1940, in which you and Mr. Ellingson had both been in the shanty while the train crossed a crossing?

A. Not that I recall.

Q. Have you ever been informed of any verbal rules, or had you ever been informed verbally of any unwritten rules covering the operation of the Polson railroad,—at any time prior to May 21, 1940?

A. No.



(Testimony of Dave Lytle.)

Q. Now, who were the four individuals that met with the company on May 18? There were four, were there not? A. Yes.

Q. Who were they?

A. Mr. Key, myself, Mr. Reece, and Mr. Brant.

Q. What were you?

A. What do you mean?

Q. What position did you hold?

A. Mr. Reece and I were members of the Trainmen's Grievance Committee; Mr. Reece was secretary and I was chairman, and Mr. Williams was associate member.

Q. And when was that committee formed?

A. That committee was formed in March, I think it was. [77]

Q. In March? A. I think so.

Mr. Walker: I am through questioning the witness, and this might be a good place to read the description in.

Trial Examiner Kent: Yes, if you have it in form.

Mr. Walker: It is hereby stipulated by the parties that the following may be received in evidence and have the same force and effect as though testified to by competent witnesses:

Whenever, throughout the record the word "Crummy" appears, it shall be understood to refer to a flat car which, on the Polson operation, serves as a caboose; whenever, throughout the record there appears the use of the term, "dog house" in con-



(Testimony of Dave Lytle.)

nection with the "crummy," it shall be understood to refer to an enclosed structure situated on the platform of the flat car.

The crummy platform stands 47 inches in height, measured from the rail top; the length of the side of the crummy is 33 feet, excluding couplings; the width of the platform is  $8\frac{1}{2}$  feet.

The structure situated on the flat car measures 6 feet 8 inches in height from the crummy platform to the roof. Between the sides of the dog house and the sides of the crummy platform, there is a clearance of 17 inches. In the front of the dog house, a window is situated 57 inches in height from [78] the crummy platform; the window is set over 6 inches from the right side of the front of the dog house, and it is recessed 4 inches from the base of the front of the dog house. The window pane measures 13 inches in height by  $11\frac{1}{4}$  inches wide.

On each side of the dog house, centered from the front to back, located 57 inches in height from the crummy platform are windows, consisting of three panes, each pane  $9\frac{1}{2}$  inches square, each pane being separated by a mutton (a mutton is a narrow strip of wood separating the panes).

On each end of the dog house are sliding wood doors, which are solid; the side windows slide from front to rear. The crummy car carries a train air line, but its own brakes are hand-operated.

The length of engine No. 18 is 34 feet from the cab platform to the front draw bar; the cab plat-

(Testimony of Dave Lytle.)

form is 76 inches in height, measured from the top of the rail. The tender of engine No. 18 on May 21 was 23 feet in length, excluding the rear coupling. The tender tank rests on a flat car platform. The platform thereof is 49 inches in height, measured from the rail top.

The tender tank measures approximately from 4 to 6 feet in height from the flat car platform upon which it rests.

Trial Examiner Kent: Is that stipulated?

Mr. Maxwell: I so stipulate.

Trial Examiner Kent: What does a logging train consist of? [79] You have the engine and tender?

The Witness: And the dog house.

Trial Examiner Kent: The dog house is on the flat car?

The Witness: Yes.

Trial Examiner Kent: Just one flat car?

The Witness: That takes the place of the caboose.

Trial Examiner Kent: You may have several flat cars in between your locomotive and the dog house?

The Witness: You carry the dog house behind your locomotive, and then you have your train.

Trial Examiner Kent: The dog house is on the first car?

The Witness: The dog house is right next to the locomotive, yes; and the dog house part is built on the flat car, on the end next to the locomotive.

(Testimony of Dave Lytle.)

Trial Examiner Kent: Well, the conductor and the brakeman, do they both ride in the dog house, or are they in another part of the train?

The Witness: They can be on any part of the train. If they have to be on the tail end, if they have got a train of logs, or if they have to be out for setting the brakes, or something like that,—when they are pulling empty, they ride in the dog house next to the locomotive; that is carried there all the time.

Trial Examiner Kent: I think I see.

The Witness: That dog house is carried back of the loco- [80] motive practically all the time, and so when you are backing up and pulling the drag, that dog house is still behind the locomotive; or whether you are shoving them. See?

Q. (By Mr. Walker:) In what direction was train No. 18 travelling after leaving the railroad camp on May 21?

A. It was travelling towards Camp 2.

Q. On May 21, when you left the railroad yards, what locomotive was being operated?

A. Locomotive No. 18.

Q. What tender was being operated that day?

A. The tender that belonged to No. 101.

Q. Will you draw a sketch indicating the position the crummy was with respect to the tender and Engine No. 18, in the direction in which the train was moving that morning? [81]

A. Well, I have drawn something here, if you can understand it (indicating document).

(Testimony of Dave Lytle.)

Q. Is that sketch drawn to scale?

A. No. It is drawn, and the measurements are given on it, as near as I could recollect. I am not much of an artist.

Mr. Walker: Will you mark that as Board's Exhibit No. 10, Mr. Reporter?

(Whereupon, the sketch above referred to was marked as Board's Exhibit No. 10 for identification.)

Q. (By Mr. Walker:) Now, referring to Board's Exhibit No. 10, which is the first figure which appears to the left of the exhibit as you are looking toward it?

Mr. Maxwell: From the bottom?

Mr. Walker: Yes.

Mr. Maxwell: Why not label it?

Q. (By Mr. Walker:) Is the first one on the left, the crummy?

A. The first figure?

Q. Yes.

A. The first figure is on the crummy.

Trial Examiner Kent: Why don't you mark it "crummy," "tender," and "locomotive"?

The Witness: All right (marking on Board's Exhibit 10).

Mr. Walker: I offer in evidence what has been marked as Board's Exhibit No. 10 for identification. [82]

#### Cross Examination

Q. (By Mr. Maxwell:) Mr. Lytle, you testified



(Testimony of Dave Lytle.)

as to your activities in the organization or formation of the Brotherhood?      A. Yes, sir.

Q. (By Mr. Maxwell:) Well, in this organizational activity, did you do that openly? [83]

A. Certainly we did it openly.

Q. (By Mr. Maxwell:) It was in 1934 when you say you started at the Polson Logging Company?      A. I did.

Q. You are a member of the A. F. of L., were you not?      A. The A. F. of L.?

Q. The A. F. of L. Union that represented the Polson Lumber employees?      A. I was.

Q. You were active in that union, were you not?

A. I was not.

Q. You were a member of the I. W. A. that represented the Polson employees from 1937 on, were you not?      A. Yes.

Q. And the shift from the A. F. of L. to the I. W. A. occurred sometime during the year 1937?

A. It did.

Q. Does the month of August refresh your recollection as to the approximate date of the shift?

A. Well, let's see; I couldn't tell you the shift, because when we sent our dues book in for the A. F. of L. to pay the dues, they came back with C. I. O. dues book. I couldn't tell you the date.

Q. That was the action of a majority of the employees, the [84] shift from the A. F. of L. to the C. I. O. in the logging industry?

A. Yes.



(Testimony of Dave Lytle.)

Q. And the shift was taken throughout,—that shift occurred throughout the logging industry?

A. Well, it was here.

Q. When you say “here,” you mean in the Grays Harbor area?      A. Yes.

Q. Other logging camps as well?

A. I imagine it was. I couldn’t tell you about the other logging camps; I was not in them.

Q. (By Mr. Maxwell): Had any of the officers of the company—Did any of the officers of the company, or any of your supervisors object to you organizing for the Brotherhood? Did any of your superiors object?

Mr. Walker: I will object to that on the same ground. It is one of the issues to be determined here. [85]

Mr. Maxwell: I am talking about the organization work, Mr. Walker.

Trial Examiner Kent: The answer may be taken.

Mr. Walker: It all goes to what is an objection. A statement made by Mr. Polson at the meeting of the 18th, for instance?

Mr. Maxwell: Well, I am going into that. I don’t know what it is.

Trial Examiner Kent: It is cross-examination, of course. You may answer.

A. I never asked the company’s consent or asked their opinion on it.

Q. And they never,—

(Testimony of Dave Lytle.)

A. (Interposing) And they never volunteered any.

Q. As a matter of fact, isn't it true that the company remained aloof from organizational activities or the selection of the unions by their employees?

Mr. Walker: Same objection.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Maxwell): That means that they stayed out, and they didn't say anything about which union to join, or anything about your union activities when you joined the A. F. of L., nor did they tell you which union to join when the employees joined the C. I. O.?

Mr. Walker: If it is limited to that, I have no objection. [86]

A. No, they did not.

Q. (By Mr. Maxwell): There never was any attempt on the part of the company to dictate to the employees what union, if any, they should belong to, isn't that correct?

Mr. Walker: Mr. Examiner, the only reason I have in objecting to the question is to the vague terminology. What may be an objection by the company, and what may be dictation by the company, depends upon a construction of those terms. When the manager of the company speaks to those men at a meeting and says certain things, is that dictation or is it an objection to the forming of the Brotherhood, or what is it?

(Testimony of Dave Lytle.)

Trial Examiner Kent: Of course, that is a question of law, I suppose. I think your objection could probably be covered by redirect examination, and then from the entire record it is up to somebody to draw the conclusion. But I think the question on cross-examination is proper.

Mr. Maxwell: The question has been answered, has it not?

Mr. Walker: No, it has not.

Trial Examiner Kent: Will you read the question?

(Thereupon, the last question was read aloud by the reporter as above recorded.)

Mr. Stevens: Mr. Examiner, shouldn't the question be clarified sufficiently to indicate whether counsel has in mind these proceedings through the A. F. of L. or C. I. O., [87] or does he mean it to include this particular issue? In other words, is the question to be limited to the transfer from the A. F. of L. to the C. I. O.?

Trial Examiner Kent: Now, of course, on cross-examination, counsel has considerable latitude. If the witness does not understand the question, he is at liberty to say so.

Q. (By Mr. Maxwell): Do you understand the question?

A. I don't believe I understand the question yet.

Q. You mean now?

Trial Examiner Kent: Will you read the question, Mr. Reporter?

(Testimony of Dave Lytle.)

(Thereupon, the question referred to was again read by the reporter as follows:)

“Question: There never was any attempt on the part of the company to dictate to the employees what union, if any, they should belong to; isn't that correct?”

Q. (By Mr. Maxwell): Is that clear to you, Mr. Lytle?

A. Does that mean the A. F. of L. from the C. I. O.?

Q. Well, I will ask you this: When were the employees first organized? Do you know?

A. 1935.

Q. Well, were they represented by any labor organization prior to that time?

A. No, they were not; not that I know of.

Q. When they organized in 1935, they did not do so at the [88] dictates of the company did they?

A. I hardly think so.

Q. The company didn't tell them to join the A. F. of L., did they?

A. I don't think so.

Q. When they transferred their affiliation from the A. F. of L. to the C. I. O., the company did not tell them to, did they?

A. I don't think so.

Q. And when you talked with Mr. Ellingson in April, while you were working on the gravel train, he asked you if you were going to join the Brotherhood? Did I understand you correct?

A. Yes.

Q. And you said, “Yes”?

A. Yes.

(Testimony of Dave Lytle.)

Q. He didn't tell you not to?

A. He didn't say anything to that. [89]

Q. That is right. Now, at the time you submitted Board's Exhibit No. 4 to the company with the request that they sign the agreement attached thereto, how many men belonged to the Trainmen and Engineers?

A. I believe there were about thirty-three.

Q. You mean, including both branches?

A. Yes, I think that is right.

Q. Both branches?

A. I believe there were about thirty-three at that time, if I remember right.

Q. And there were about thirteen or fourteen,—Strike that. There were about thirty-four or thirty-five men working on the railroad; is that right?

A. Yes, I think there was.

Q. That, however, was made known to the company, was it not?

A. That they belonged to the Brotherhood?

Q. Yes.

A. I believe that the company was informed that a majority of them belonged.

Q. Do you recall, in support of your claim, you furnished a signed statement by each of the individuals that they had selected the Brotherhood, or Brotherhoods, as their representative?

A. What was that question? [90]

Q. Do you recall securing from each of the men



(Testimony of Dave Lytle.)

working on the railroad eligible to membership in the Brotherhood a signed statement to the effect that they had designated the Brotherhood as their bargaining agent?      A. Yes.

Q. And those slips were submitted?

A. Yes, those slips were submitted after this agreement was submitted to the company; after the agreement——

Q. After the agreement was submitted?

A. Sometime after the agreement was submitted.

Trial Examiner Kent: That agreement was submitted when?

The Witness: May 18, 1940.

Q. (By Mr. Maxwell): Now, referring to the matter of run-away cars along in April, do you recall that matter in April, 1940?      A. Yes.

Q. You were the head brakeman at that time?

A. I was.

Q. Didn't Mr. Ellingson investigate the cause of this accident, the cause of them getting out of control?

A. Mr. Ellingson was not superintendent at that time.

Q. Was Mr. Ellingson superintendent in May, 1940?

A. You are talking about 1940?

Q. Wasn't the run-away train, or the run-away cars,——

A. (Interposing) When? In 1940? [91]

(Testimony of Dave Lytle.)

Q. Well, are you thinking of that accident and wreck you had in 1937?

A. That is the one I am thinking about, yes.

Q. Well, in 1940, a train got out of control, did it not? You were the head brakeman when it got out of control?

A. Yes, I know what you are referring to now.

Q. Mr. Ellingson talked to you at that time?

A. About the run-away?

Q. Yes.

A. Mr. Ellingson wanted to know why we came down the hill so fast.

Q. Isn't it true that you might not have had enough brakes set, or that some of them might have kicked loose?

A. And I told him.

Q. You told him that?

A. I certainly did.

Q. And at that time didn't Mr. Ellingson say to you, "You want to watch yourself on flagging crossings"?

A. He did not.

Q. He did not warn you at that time about flagging the crossings?

A. He certainly did not.

Q. At that time, did he tell you you were on probation?

A. He did not.

Q. Isn't it true that it has been the practice and the policy [92] of the Polson Logging Company that their rules and regulations be passed along orally as to the safety and safe operation of their trains?

(Testimony of Dave Lytle.)

A. I never heard of any rules or regulations.

Q. How about their orders in the operation of a train; are they written?

A. Their movement orders?

Q. Yes.

A. Their dispatching orders are oral.

Q. They are oral?           A. Yes.

Q. All oral?           A. Yes.

Q. And the regulations,—Are there any regulations with regard to a flagman going back when the train is stopped on the main line, and there is another train following?

A. The company does not say so.

Q. Well, what is the practice?

A. We flag, if there is anything to flag.

Q. Is that by reason of any regulation of the company?           A. No, certainly not.

Q. And that is a safety measure, is it not?

A. Yes.

Q. Now, are you familiar with the safety standards issued by [93] the Department of Labor of the State of Washington?

Q. (By Mr. Maxwell): I hand you Respondent's Exhibit No. 1 for identification and ask you if you know what that is (counsel handed a booklet to the witness)?

A. It is "Loggers' Safety Standards," it says.

Q. You have seen that before, have you not? I mean, not the copy, but those standards?

Mr. Walker: Same objection. It is not limited

(Testimony of Dave Lytle.)

as to time. I will ask that counsel limit the question to relate to prior to May 21, 1940.

Trial Examiner Kent: Well, it is cross-examination. The answer may be taken.

A. I never had anything to do with any of those. [94]

Q. (By Mr. Maxwell): Did you ever see a copy of the regulations' standards?

A. I picked up a copy of this one time.

Q. When did you pick up a copy?

A. I don't remember when it was, either.

Q. Well, was it before May 21, 1940?

A. It was after May 21, 1940.

Q. Where did you pick it up?

A. That I can't say.

Q. As a matter of fact, aren't these distributed to the employees at the Polson Logging Camp?

A. No, they have not been; not that I know of.

Q. Now, is there a rule in the operation of the railroad that all main lines had to be kept clear except by specific permission or orders?

A. Will you frame that question again, please?

Q. Do you recall a rule that the main lines had to be kept clear at all times, except where there was specific permission or orders issued authorizing that the main line be blocked and the train remain thereon?

Mr. Walker: I will object to that; it assumes that there is such a rule.

Mr. Maxwell: I am asking him whether there is.

(Testimony of Dave Lytle.)

Mr. Walker: There is no showing that there was such a rule promulgated by the Polson Logging Company, or any such [95] rule formally issued to any of the employees. [96]

Q. (Mr. Maxwell): As a matter of fact, Mr. Lytle, were you not instructed when the main line was blocked and would be blocked for a period of time, to call the dispatcher?

A. I was not.

Q. You were not instructed to do it?

A. Never instructed to do it.

Q. Did the train, in approaching crossings,—did the engine sound the whistle? A. They did.

Q. Is that not under instructions? [98]

A. Yes; they blowed at the crossings.

Q. (By Mr. Maxwell): And if they didn't blow the whistle at the crossings, you would have called their attention to it, as head brakeman; if they habitually neglected to do so?

A. I have nothing to do with this; I have nothing to do with the whistle.

Q. I know, but if the engineer had habitually failed to blow his whistle at highway crossings, wouldn't you have called his attention to it?

A. No, I would not.

Q. Weren't these instructions, — Weren't there instructions that a whistle be blown at the crossings?

A. The engineer would probably get those instructions. [99]



(Testimony of Dave Lytle.)

Q. (By Mr. Maxwell): Do you know the reason for requiring the whistle to be blown at crossings?

A. It is usually blown as a warning whistle,—signal.

Q. Is that a safety measure?

A. Yes, I suppose you would call it that.

Q. (By Mr. Maxwell): Was there any written instruction requiring that whistles be blown at crossings?

A. Not by the Polson Logging Company.

Q. How are orders for the operation of the train transmitted on the Polson line?

A. They are transmitted by word of mouth, and in case of a telephone failure,— [100]

Q. (By Mr. Maxwell): Was there a regulation, when the trains were out and there was a failure of the telephone line?

A. They had no regulations in effect.

Q. What was done in that case?

A. A man had to use his own judgment.

Q. What do you mean by that?

A. Either stay right where he was,—usually.

Q. In other words, if the telephone failed, the train would stay right there and never move on?

A. So far as orders were concerned.

Q. You say he had to use his own judgment?

A. Yes.

Q. And you mean you would stay right on the spot until the telephone was put back in order?

(Testimony of Dave Lytle.)

A. If that was your judgment, yes.

Q. Might you move along on the road, on your way?

A. That would be up to a man's judgment, just as I said, whether he should go ahead or stay there; if he had no rules or regulations to work under, he would be working in the dark.

Q. Were there any instructions from the train master as to what should happen, or what should be done?

A. No.

Q. There was not? [101]

A. No; there never was.

Q. When you went to work for the Polson Logging Company, what instructions, if any, were you given?

A. We were not given any.

Q. You were just put on the train and turned loose?

A. I certainly was.

Q. In what capacity did you go to work there first?

A. I went to work as a second brakeman.

Q. Did the head brakeman tell you anything?

A. The head brakeman told me what he was going to do; he told me what to do, yes.

Q. Did he ever tell you anything about flagging?

A. The head brakeman didn't have to tell me anything about flagging.

Q. In other words, you knew it all? Did the train master or the dispatcher, as you have referred to Mr. Groschlose, ever give you any general instructions in the way of regulations, or advise you on that?

(Testimony of Dave Lytle.)

A. Just what do you mean by that? Do you mean movement by the train or what?

Q. No. On such matters as safety?

A. No; he never did.

Q. Do I understand then that Polson Logging Company operated approximately fifty miles of railroad without any safety regulations? [102]

A. The Polson railroad never had any posted rules or written rules.

Q. Did they have any oral rules about safety?

A. No.

Q. Nobody ever told you about safety?

A. I never got any instructions at all.

Q. Did you get any advice?

A. On a train movement?

Q. Yes. A. I got train movements.

Q. And that is all? A. That is all.

Q. Now, referring to this meeting of May 18, when you presented this agreement and asked the company's signature, didn't Mr. Polson say that he didn't know whether the company could sign any agreement or deal with you because they had an agreement with I. W. A. Local No. 2?

A. Mr. Polson never mentioned that agreement with Local 2 of the I. W. A.

Q. Did you know whether or not the company had recognized I. W. A. Local No. 2?

A. We didn't figure the company had a written agreement with Local 2, I. W. A.

Q. Did you know that they had been dealing with them for all the employees? [103]

(Testimony of Dave Lytle.)

A. Verbally, yes.

Q. Didn't Mr. Polson tell you that they had recognized I. W. A. Local 2 as the bargaining agent for the employees?      A. Yes, he did.

Q. And didn't he say that he didn't know, under the National Labor Relations Act, whether the company could recognize and deal with the trainmen as the bargaining agent for the trainmen, and the engineers for the engineers?

A. Mr. Polson said he would look it over, and talk to his lawyer; he said he would take it to his lawyer for advice.

Q. Yes, and didn't he also at that time refer to the National Labor Relations Act?

A. He said the law would tell him what to do.

Q. That is right. Didn't Mr. Polson agree to submit this to his attorney for advice?

A. Certainly; he said he would.

Q. And when you asked for a written reply, there was no hesitancy on his part in stating that he would give it; isn't that right?

Mr. Walker: I will object to that question on the ground that it calls for a conclusion of the witness. Let's find out what was said by the parties and get the facts of the matter. The conclusions can be drawn by the Board as to the facts, or as to the inferences to be drawn from any conversations. [104]

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Maxwell): What did Mr. Polson



(Testimony of Dave Lytle.)

reply when you asked him for his answer in writing? What did he say?

A. He said, "I will give you an answer."

Q. Handing you Board's Exhibit 3, and calling your attention to page 2 thereof, do those paragraphs not state substantially the same thing that Mr. Polson stated to you when the committee called on him on May 18?

A. Give me that question again, please.

Q. Referring to page 2 of Board's Exhibit 3, the last three paragraphs in the letter of May 29, to you and Sam Key, chairmen of the respective organizations—Brotherhood organizations from the Polson company. Do those paragraphs not state substantially the same thing as Mr. Polson stated to your committee at the meeting in his office on May 18?

A. Mr. Polson does not state in there that we are making a mistake.

Q. Did Mr. Polson state to you on May 18 that the company had an agreement with the I. W. A., Local 2?

A. He said they had been dealing with Local 2, I. W. A.; yes.

Q. And that they had recognized I. W. A. Local 2 as the bargaining agent for all the employees?

A. Yes, he did.

Q. Did he not state to you at that time that he did not know, where a majority of the employees had designated a particular [105] union, whether



(Testimony of Dave Lytle.)

the company had the right to deal with any other union unless the National Labor Relations Board first approved a different bargaining unit or unless the union that had been selected agreed to relinquish the claims over the small groups of employees?

A. Mr. Polson stated that the law would decide that.

Q. Mr. Polson at that time indicated his willingness to be bound by a decision of the Board, did he not, and the law? A. Yes, he did.

Q. Now, at that time did Mr. Polson ask you if you had contacted the C. I. O.?

A. You mean the meeting of May 18?

Q. Yes.

A. Frame that question again, please, Mr. Maxwell.

Mr. Maxwell: Will you read the question?

Trial Examiner Kent: Read the question.

(Thereupon, the pending question was read aloud by the reporter as above recorded.)

A. I don't believe he did.

Q. (By Mr. Maxwell): Did he suggest that you contact the C. I. O. and ask them if they would relinquish the claim for representation of the engineers and firemen and trainmen? A. No.

Q. Was there any heated argument at that meeting of May 18? A. There was not. [106]

Q. You have testified that Mr. Polson stated that

(Testimony of Dave Lytle.)

the men were making a mistake in affiliating with the Brotherhood?

A. He did make that statement. [107]

Q. (By Mr. Maxwell): Did Mr. Polson raise his voice when he made that statement?

A. Not out of the ordinary. [108]

Q. (By Mr. Maxwell): You referred to a crossing as Axford Prairie Crossing? A. Yes.

Q. What is that?

A. That is where the railroad and the highway cross.

Q. What highway?

A. The Olympic Highway.

Q. Is that the main highway of the State of Washington? A. Yes.

Q. And with what railroad?

A. The Polson Logging Company.

Q. Is that crossing known by any other designation? A. This highway crossing?

Q. Yes. A. No; that is what it is.

Q. To refresh your recollection, is that referred to as Crossing No. 1? [109]

A. I suppose it could be called Crossing No. 1.

Q. Do you know whether it is or is not?

A. I have always heard it referred to as Axford Prairie Crossing.

Mr. Maxwell: I will reserve further cross-examination until morning.

EARL WOOD

was called as a witness for and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Will you state your name?

A. Earl Wood.

Q. Where do you live, Mr. Wood?

A. 111 24th Street, Hoquiam.

Q. Hoquiam, Washington? [110]

A. Yes, sir.

Q. What is your occupation?

A. Locomotive engineer.

Q. Are you employed by the Polson Logging Company?      A. I am.

Q. How long have you been employed by them?

A. I went to work for them in January, 1922.

Q. 1922?      A. Yes.

Q. Since that time have you been employed as an engineer?      A. Yes.

Q. Do you know Bennett Ellingson?

A. I do.

Q. And as an engineer, do you have occasion to haul from,—strike that. As an engineer in May, 1940, did you have occasion to haul from Old Camp 6?      A. Yes.

Q. Now, did you have a conversation with Mr. Ellingson on or about May 1, 1940?

A. Yes, I did; I no doubt had several.

Q. Where did the conversation take place?

(Testimony of Earl Wood.)

A. If it is the conversation,—Will you give me more information?

Q. On or about May 1, 1940, did you have a conversation with Mr. Ellingson about the Brotherhood? [111]

A. Yes, I remember that very distinctly.

Q. Where did that take place?

A. That took place at what they call the dump siding by Old Camp 6.

Q. And what was said at that conversation?

Mr. Maxwell: Is that the one referred to in the complaint?

Mr. Walker: Yes.

Mr. Maxwell: Was this April first or May first?

Q. (By Mr. Walker): When was it?

A. Well, it was along about that time; I don't remember the date myself.

Q. What was said at that conversation?

A. Well, we had pulled in there on the siding and were waiting for another train, and I was alongside the engine, and Mr. Ellingson came up to me, and he said, "How is she working?" I said, "Pretty good." Then I said, "It is working pretty good." Then he said, "There is a lot of work that needs to be done on the engine."

Q. Did you or Mr. Ellingson say that?

A. Well, maybe I said that. We were talking about it. Anyhow, Mr. Ellingson said, "We were figuring on putting this engine in the shop and getting it overhauled; and there is a lot of repair

(Testimony of Earl Wood.)

work to be done on other engines." But he said, "This Brotherhood trouble has come up, and I don't know how much trouble we are going to have, and it has knocked it all [112] in the head. If there is going to be a lot of trouble, it is going to be shut down." I said I didn't see why there should be any trouble. I told him, "It is a cinch the men don't want any." Then he said, "This man Groves has brought this trouble up. He is a trouble maker, anyway." I told him that I didn't think Mr. Groves had brought up anything any more than anyone else; that if he had, I didn't know anything about it. I told him that there wasn't anything that anybody had brought up; that we were all dissatisfied with the setup in the CIO, and we talked it over and made up our minds to go into the Brotherhood. At that time he didn't like it, he wasn't very well satisfied,—

Mr. Maxwell: Just a moment.

Trial Examiner Kent: Just testify as to what he said.

The Witness: That is all he said, and he turned and left me.

Q. Have you ever had any instructions from anybody concerning [113] safety operations?

A. Well, none outside of blowing the whistle.

Q. Have you ever seen any printed rules or regulations posted about the properties of the Polson Logging Company at any time before May, 1940?

A. No, sir; I never did.



(Testimony of Earl Wood.)

Cross-Examination

[114]

By Mr. Maxwell:

Q. Referring to this conversation you had with Mr. Ellingson, who else was present?

A. There wasn't anyone else present that I know of.

Q. You have worked in the logging industry for sometime, have you not? A. Yes.

Q. Are you familiar with the jurisdictional disputes between unions that have existed in this industry in the past?

A. Well, to a certain extent.

Q. Did Mr. Polson, at the time you had any discussion with him,—Did Mr. Ellingson, at the time you had a discussion with him, infer that the company was concerned with jurisdictional disputes between the Brotherhood and the IWA?

A. That was the only discussion I had with him concerning the union.

Q. (By Mr. Maxwell): Was the subject of the jurisdictional dispute mentioned at that time?

A. No, I don't believe there was. [115]

Q. Had you withdrawn from the IWA?

A. I had.

Q. Did Mr. Ellingson indicate that he was afraid that the IWA would make a jurisdictional dispute out of the men getting into the Brotherhood?

A. He didn't state anything of that kind.

(Testimony of Earl Wood.)

Q. Did he indicate that the dispute, or that there was a controversy between the two unions?

A. No.

Q. (By Mr. Maxwell): Did he say the company was concerned as to whether or not there was or would be a jurisdictional dispute?

A. No, he didn't say that; he said just exactly what I said.

Q. What did he say?

A. He said that if there was any trouble that arose, that we would shut the whole thing down.

Q. The trouble from whom? Whom would the trouble be raised by?

A. He didn't state that.

Q. Did he indicate—did he say that the company would shut the whole thing down if there was any trouble?      A. No, he did not.

Q. What did you say about this trouble?

A. I said I didn't think there was any call for anyone getting [116] scared about trouble, because the men didn't want trouble any more than the company did.

Q. Did Mr. Ellingson ask you whether or not the CIO had threatened to make any trouble?

A. No, sir; he did not.

Q. Did Mr. Ellingson say that if the men joined the Brotherhood, they would shut the plant down?      A. No, sir.

Q. Did he say they would curtail the company's operations?      A. Not at all.

(Testimony of Earl Wood.)

Q. Did he threaten to take any action against you for having joined the Brotherhood, or for having an intention of joining the Brotherhood?

Mr. Walker: I object to that as calling for a conclusion.

Trial Examiner Kent: Read the question.

(Thereupon, the pending question was read aloud by the reporter as above recorded.)

Mr. Walker: It seems to me that he is dealing in probabilities and speculation.

Trial Examiner Kent: The answer may be taken.

A. Well, I think that would be a matter of judgment, whether it was a threat.

Q. Did he say that he would fire you?

A. No.

Q. Did he say that he would suspend you? [117]

A. No.

Q. Did he tell you not to join?

A. No, he didn't tell me not to join.

Q. Now, you have been an engineer since 1922 on the Polson line? A. Yes.

Q. Were there any safety rules or regulations in effect? A. No.

Q. No safety rules or regulations?

A. No.

Q. Did anyone ever tell you or instruct you in regard to safety?

A. Well, nothing more than blowing the whistle, being careful to blow the whistle plenty at the crossings.

(Testimony of Earl Wood.)

Q. As you approached the crossing, did you look ahead for the head brakeman or the second brakeman on the crummy?      A. Yes.

Q. What was the occasion for you looking ahead on the crummy to see the second brakeman or the head brakeman?

A. I didn't look at them so much as the road, because I was watching the road, because they didn't have anything to do with the operation of the train; I had the full operation of the train.

Q. You mean, you could start and stop?

A. Yes. [118]

Q. That starting and stopping was from the engine?      A. Yes.

Q. You would look ahead on the crummy, and you would watch for a signal from the head brakeman?

A. I didn't look at them so much as the road; the road is what I watched.

Q. Did you look for the second brakeman,—you had a second brakeman on the trains, also?

A. Yes.

Q. Did you watch for a signal from him?

A. I watched for all signals, of course.

Q. That was the regular thing?

A. There was nothing about a rule to that effect.

Q. But that was what was done?      A. Yes.

Q. The crummy cars are not equipped with air brakes?

(Testimony of Earl Wood.)

A. No; the air is cut out on them.

Q. On what runs have you worked as an engineer? What runs have you pulled?

A. I have pulled all of them.

Q. When did you last work on the run from Railroad Camp to Camp 6?

A. This last week.

Q. Prior to May 21, 1940?

A. Oh, I have worked on all of them; I couldn't state just [119] when.

Q. Were you ever instructed to blow the whistle at a crossing?      A. Oh, yes.

Q. Handing you what has been marked for identification as respondent's Exhibit No. 1, I will ask you if you have ever seen that before? Not that exact copy, but a set of standards?

Mr. Walker: Again, I object to this unless counsel limits it to a period prior to May 21, 1940.

Q. (By Mr. Maxwell): Yes, prior to May 21, 1940, counsel, if that will help you.

A. I have never seen this before (indicating).

Q. Did you ever see a pamphlet or a booklet like that?      A. Not that I know of.

Q. Were you ever given one?      A. No, sir.

Mr. Maxwell: Your witness.

### Redirect Examination

[120]

Q. (By Mr. Walker): In crossing a crossing, when you see an emergency arising, do you depend on a signal from the brakeman?



(Testimony of Earl Wood.)

A. No; I depend on my judgment. If I waited for a signal from the brakeman, there might be something happen.

Q. When you are crossing a crossing and an emergency arises, and you get no signal from the brakeman, what do you do?

A. I stop, if necessary.

Q. Even without a signal? A. Yes, sir.

Q. Has Mr. Ellingson ridden on a crummy attached to your train?

A. Lots of times. [121]

Q. (By Mr. Walker): In crossing crossings, does your brakeman always ride outside of the crummy or inside of the crummy?

A. He is always outside when crossing crossings.

Q. Has Mr. Ellingson ever been on the crummies with the brakeman? A. Yes.

Q. Is there an angle cock on the crummy?

Q. (By Mr. Walker): You testified on cross-examination that there is an air line through the crummy? A. Yes.

Q. And there is an angle cock on the crummy?

A. Yes.

Q. Can the brakeman stop the train from the crummy by operating the air line?

A. Yes, he can by lying down and opening the angle cock, or the hose or the train line.

Mr. Walker: That is all.

#### Recross-Examination

Q. (By Mr. Maxwell): Where is the angle cock?

(Testimony of Earl Wood.)

A. Do you mean where it is? [122]

Q. Yes.

A. It is a line which couples between the two box cars. It is just above the hose, just where the hose connects on to the pipes; there is an angle cock there.

Q. About how far below the surface of the crummy car is that?

A. That would be probably sixteen or eighteen inches.

Q. That would not stop the train unless the air line is connected with the engine?

A. The air is connected with the engine.

Q. It would not stop it unless it was connected with the engine?

A. No, it would not.

Q. As you approach the crossing, do you approach with your train under control?

A. Yes.

Q. On which side of the engine are you on?

A. Right side.

Q. The right side as the engine moves in a forward direction, normally?

A. Yes.

Q. If the engine were backing up, you would be on the left side?

A. Yes.

Q. At these crossings you have a clear, unobstructed view to your right as you face the crossing, going backwards? [123]

A. Yes.

Q. Always at all crossings?

A. Yes.

Q. If a car was coming, if you hadn't seen it, would you also rely on the brakeman to give you a signal?

(Testimony of Earl Wood.)

A. Yes; I would expect him to look, also.

Q. You would also expect him to look?

A. Yes.

Q. If he gave you a signal, what kind of a signal would he give you?

A. He would give me the wash-out.

Q. That is with both hands turned down to his sides?

A. Yes, to stop it.

Q. Will you describe it?

A. A wash-out is like this (indicating). He would hold his arms extended, and then he would flop them down, both of them, quickly; that is a wash-out.

Q. In other words, the arms extended and dropped quickly?

A. Yes.

Q. He might do it two or three times?

A. Yes, he might.

Q. And if you did get a signal from him to stop, you would stop right away?

A. Right away.

Q. You wouldn't depend on your own faculties?

[124]

A. No, I would depend upon the brakeman as well as myself.

Mr. Maxwell: That is all.

#### Redirect Examination

Q. (By Mr. Walker): Are the air lines on all the Polson crummies connected with the engine?

A. Yes, they are. [125]

## Proceedings

Trial Examiner Kent: The hearing will be in session.

Mr. Maxwell: Mr. Examiner, Board's Exhibits 7 and 8 for identification were rejected on the grounds that they were not properly identified. We have checked against the company files, in the office, Board's Exhibits 7 and 8, as offered yesterday, or, rather, copies of them; and we find that they are the same. If Mr. Walker wants to put Mr. Polson back on the stand to identify them, all right. We are not going to object on the grounds of improper identification or insufficient identification. I do not, however, want to waive my objection as to the materiality of these exhibits.

Trial Examiner Kent: Very well. Do you want to reoffer them?

Mr. Walker: Yes, I will do that, Mr. Examiner. Based upon Mr. Maxwell's statement concerning the identification of the same, Board's Exhibit 7 and 8 are now reoffered.

Trial Examiner Kent: They will be admitted.

Mr. Maxwell: I do not waive my objection to materiality.

Trial Examiner Kent: Subject, of course, to your objection as to materiality.

(Whereupon the documents heretofore marked Board's Exhibits 7 and 8 were received in evidence.) [129]

BOARD'S EXHIBIT NO. 7

August 14, 1935.

To Our Employees:

For the purpose of reestablishing the friendly relations that have existed between our companies and their employees, we submit the following as a basis for resuming operations:

(1) (a) We agree to negotiate with a committee of our own employees elected by our employees who are members of Local No. 2639, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor for collective bargaining purposes for its employee members.

(b) We agree to negotiate with any individual committee, or committees of our employees for collective bargaining purposes for the employees whom they represent.

(c) Any general change in base pay or hours of work will apply to all employees.

The above committee must be employees of the lumber manufacturing plants and logging operations of each individual company for one year or more.

The following holidays shall be observed: Sundays, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, and Christmas.

Working days will be the regular eight-hour day, five days per week, or forty hours per week.

Overtime to be paid on straight production in excess of eight hours per day at the rate of time and



one-half, excepting train crews and other jobs to be worked out with the committee. Complete regulations for overtime work to be worked out as soon as possible by the committee and management on resuming operations.

The basic rate of pay shall be 50 cents per hour for common labor. Those companies having a basic rate of 45 cents at the time operations closed will increase wages in the higher brackets 5 cents per hour. Those companies having a base rate of 42½ cents at the time operations closed will increase wages in the higher brackets 7½ cents per hour. Piece work will be adjusted in accordance. These wages to remain in effect as long as economic conditions will permit. No change will be made without first being taken up with the committee and management.

We agree to negotiate with a safety committee of our employees elected by our employees on safety conditions in our operations.

No strike shall be caused or sanctioned by the union and no lockout shall be entered upon by employers until every peaceable method of settlement shall have been tried. At no time shall employees be required to act as strikebreakers, go through picket lines or armed guards or handle any forest products declared unfair by any organization affiliated with the American Federation of Labor.

All men who were employed on May 6, 1935 shall have the privilege to return to their former positions without discrimination.

We expect our former employees to report for duty on the date of opening operations or within 10 days thereafter. Failure to do so unless for unavoidable reasons will forfeit the right of said employees to reinstatement.

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## BOARD'S EXHIBIT NO. 8

### Exhibit B

For the purpose of re-establishing the friendly relations that have existed between this company and its employees, we submit the following as a basis for resuming operations:

1. To immediately select, appoint and keep in its employ a personnel and labor relations officer who is to meet with the Shop Committee.

2. To re-employ all men who were on the payroll October 27th, 1936, without discrimination. Also to give preference to local men. To re-employ nine (9) men employed in the shop and laid off approximately sixty (60) days before October 27th, 1936, when men are hired for the same positions.

3. To furnish fresh milk immediately at no extra cost and to make living conditions in the camps comparable to living conditions in the camps in this district without unreasonable delay.

4. To re-establish the use of a call board in so far as practical and so long as present system continues, and to equalize as far as practical working hours of trainmen.

5. The Blanket Agreement is confirmed.

6. All men on the payroll on October 27th, 1936, are expected to report for duty on the date of opening operations or within ten (10) days thereafter. Failure to do so unless for unavoidable reasons will forfeit the right of employees for reinstatement.

Dated this 11th day of February, 1937.

POLSON LOGGING COMPANY

By THEODORE B. BREUNER

Secretary

By F. A. POLSON

Manager

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DAVE LYTLE

(resumes the stand)

Cross Examination

(continued)

Q. (By Mr. Maxwell) At the meeting testified to by you on May 18, 1940, at which you presented which is Board's Exhibit No. 4 to Mr. Polson, was any question raised as to what was the appropriate bargaining unit?

A. Mr. Polson stated that a craft union would be apt to give us a jurisdictional dispute.

Q. Was any question raised as to whether or not a single bargaining unit had been established by past practice and dealings? Was that discussed?

A. I don't understand your question.

(Testimony of Dave Lytle.)

Q. How is that?

A. I don't understand your question, just exactly.

Q. Well, on May 21, 1940, and prior thereto, were all the logging employees—employees of the logging operations of the Polson Company,—bound together in a single group for the purpose of collective bargaining?

A. Well, that would be pretty hard for me to say, because I never saw the membership list; so I couldn't tell you whether they belonged to the I. W. A. or not. [130]

Q. You misunderstand my question. Did the I. W. A. represent all of them for the purpose of collective bargaining? You understand that they do not have to be members to be represented, if the majority of the employees selected the I. W. A.

A. Yes, I believe they were.

Q. And prior to May, 21, 1940, the Trainmen were represented by the I. W. A. were they not?

A. Well, the Trainmen were not represented by anybody.

Q. Did you belong to the I. W. A.

A. In 1921.

Q. No.

A. I mean, prior to May 21, 1921.

Q. Not 1921.           A. May 21?

Q. 1940.           A. 1940?

Q. Did you belong?           A. No, I did not.

Q. Did the other Trainmen belong?

(Testimony of Dave Lytle.)

A. Some of them did.

Q. The employees of the Polson Company were considered as constituting a single unit for the purpose of collective bargaining; is that correct?

A. Yes, I believe they were. [131]

Q. Didn't Mr. Polson state to you that the unit for bargaining, as identified by past practice and contract was an industrial unit? A. He did.

Q. And didn't he say that he doubted whether the company could change the bargaining unit without the approval of the [132] National Labor Relations Board? A. Yes.

Q. And didn't Mr. Polson suggest that if the I. W. A. was willing to relinquish their claim to represent the Trainmen and Engineers, the company's position regarding the bargaining unit,—that the company might be able to make a more definite decision? A. No.

Q. Did he suggest to you that you ask the I. W. A. if they were willing to relinquish their claims? A. No.

Q. Mr. Lytle, what was done when a train approached a crossing, when the engine was backing up, that is, pushing ahead of it the trucks, in the direction it was going,—strike that. What was done when a train approached a crossing when the engine was backing up, that is, pushing ahead of it, in the direction it was going, the crummy car and several empties? What did you do when the engine was backing up, pushing the crummy car,



(Testimony of Dave Lytle.)

and ahead of the crummy car there were several empties, as they approached the crossing?

A. Well, it would be up to the trainman's judgment as to what they did.

Q. What would the brakeman do?

A. As I said, that would be up to the brakeman's judgment as to what was done. [133]

Q. Did they ordinarily stop the train?

A. Some of them might have stopped the train and flagged the crossing.

Q. Did they flag the crossing?

A. Some of them might have.

Q. Were you ever the brakeman on a train that was backing up, pushing the crummy and several empties ahead of it, crossing a crossing?

A. Yes.

Q. And what did you do?

A. That has been so long ago that I have almost forgotten. I suppose, if it was a long drag, I would stop and get out and flag the crossing.

Q. Where did the head brakeman ride under the circumstances stated?

A. What do you mean?

Q. Where they were pushing the crummy and several empties, where did the head brakeman ride?

A. That depends on the,—he might ride the point.

Q. What point?

A. The point of the empties; that would be on the first one that crossed the crossing.

(Testimony of Dave Lytle.)

Q. Where else might he ride?

A. He might ride two or three cars behind the point.

Q. Generally, was his position toward the head end of the [134] direction toward which he was moving?

A. That was up to him.

Q. If he was on the crummy car, and there were 7 or 8 empties ahead, where would the second brakeman be?

Mr. Stevens: Does counsel have in mind any and all crossings or just this particular crossing?  
[135]

Mr. Maxwell: A main highway crossing.

The Witness: The second brakeman would be on the crummy car unless told by the head brakeman to go out, I suppose.

Q. (By Mr. Maxwell, continuing) Then, if you had several empties ahead, and the first brakeman was not out there, he would instruct the second brakeman to be out there on the first car or on the front end?

A. I can't answer for somebody else. How am I going to answer what somebody else is going to do? [136]

“Then, if you had several empties ahead, and the first brakeman was not out there, he would instruct the second brakeman to be out there on the first car or on the front end?”)

Trial Examiner Kent: Well, I think a fair interpretation would be his practice; how you operated when you were on the train.

(Testimony of Dave Lytle.)

The Witness: When I was on the train, I had to use my own judgment.

Q. (By Mr. Maxwell, continuing) If you were not on the front end, did you instruct the second brakeman to ride out there as they approached the crossing? A. If there was any necessity.

Q. What do you mean by "If there was any necessity."?

A. It is a kind of confusing question, Mr. Maxwell.

Q. It is a confusing answer, and I am asking you to clarify it.

Trial Examiner Kent: Now, what do you consider a necessity? [138] What do you mean by "necessity"? What is your explanation?

The Witness: Well, if I thought there was any danger of trouble, I would instruct him to go out there.

Mr. Maxwell: What do you mean by "any danger of trouble"?

The Witness: Any danger of running over anybody or anything.

Q. (By Mr. Maxwell, continuing) Well, when would you give that instruction?

A. It would naturally be given before there was,—before it came to a point where there would be any trouble.

Q. Well, what is the first crossing on the main highway after you leave the railroad camp, in a westerly direction? A. Axford Prairie.

(Testimony of Dave Lytle.)

Q. And when you give instructions to the second brakeman,—strike that. When would you give that instruction to the second brakeman with respect to the time the train left railroad camp?

A. I would give it to him before reaching the crossing.

Q. While the train was going? A. Sure.

Q. How far in advance of reaching the crossing?

A. Time enough to get out there to the point.

Q. And what was the purpose of having him get out to the point? What would be the purpose?

A. That means the head end of the train. [139]

Q. That means the head end of the train in the direction in which the train is moving?

A. To see if everything is clear.

Q. And what was his duty if the crossing was not clear? What would be his duty if the crossing were not clear?

A. It would be to flag the engineer.

Q. And what would be his duty if he saw an automobile coming down the highway pell-mell?

A. It would be to flag the engineer, I suppose.

Q. Now, what was done when the engine was pushing the crummy ahead, but pulling the empties behind, as they approached the main highway crossing? What did the trainmen do?

Mr. Walker: I object to that. That is one of those general shotgun questions.

(Testimony of Dave Lytle.)

Trial Examiner Kent: I think it should be limited to his practice,—to his train.

Mr. Maxwell: Well, Mr. Examiner, I am entitled to a wide range in my cross examination; this witness has testified that he started in as a second brakeman, and that he has worked as a head brakeman and second brakeman; so his knowledge is not limited necessarily to what he would do as a head brakeman; and the complainants and the Board have alleged that we have discharged this man because of membership or activity on behalf of the Brotherhood. We have answered that the reason for the discharge was the violation of the safety standard rules, [140] or safe operations of the train; so, I think he is qualified to answer the question, particularly due to the fact he has worked as a second brakeman and has worked as a head brakeman.

Mr. Walker: In any event, it would still be limited to what he did on his train. He has absolutely no control over what the enginemen would do on the trains that he would work; that would be the duty of the trainmen,—that would be the duty of the enginemen. He could only testify as to what his experience has been in the operation of his train.

Trial Examiner Kent: I would think so, unless the question is so directed that,—

Q. (By Mr. Maxwell, continuing) What did you do as the train approached the crossing, pushing the crummy but pulling several empties?



(Testimony of Dave Lytle.)

A. I rode on the crummy.

Q. And where in the crummy did you ride?

A. That would depend on the weather.

Q. Did you flag the crossing?

A. No; there is no set rule to flag the crossing.

Q. You didn't flag the crossing? A. No.

Q. If the sun was shining, did you flag the crossing?  
A. No.

Q. If it was foggy, did you flag the crossing then?  
A. No. [141]

Q. You did not? A. No.

Q. You did not flag the crossing? A. No.

Q. Did you instruct your second brakeman to flag the crossing? A. No.

Q. Did the second brakeman,—did your second brakeman flag the crossing? A. No.

Q. On the 21st of May, 1940, what run were you on? A. I was on the Camp 2 run.

Q. And where does that go from.

A. It goes from Railroad Camp to Camp 2.

Q. Does that run across the main highway, the Olympic highway? A. Yes.

Q. Is that the Axford Prairie crossing?

A. Yes.

Q. Did you flag the Axford crossing on the 21st of May of 1940? A. No.

Q. Did you instruct the second brakeman to flag the Axford crossing? A. No.

Q. Did he flag the Axford Crossing?

A. No. [142]

(Testimony of Dave Lytle.)

Q. Where were you riding?

A. In the crummy.

Q. Where in the crummy?

A. By the window..

Q. Inside the dog-house?

A. Inside the dog-house.

Mr. Stevens: Does counsel have in mind the first trip, the second trip, or all trips that day?

Mr. Maxwell: The morning trip, going out.

Q. (By Mr. Maxwell, continuing) Your testimony related to the morning trip, going out?

A. Yes, to the morning trip.

Q. Did you cross that crossing again that day?

A. Yes.

Q. Going out? A. Yes.

Q. Was the crummy ahead of the engine?

A. We were shoving it.

Q. Did you flag the crossing on the second trip?

A. No.

Q. Did the second brakeman flag the crossing on the second trip? A. No.

Q. Did you instruct the second brakeman to flag the crossing on the second trip? [143] A. No.

Q. Did you make more than 2 trips that day?

A. 2 trips is all.

Q. You have worked as a second brakeman?

A. Yes.

Q. When you first went to work for Polson on the railroad you worked as a second brakeman?

A. Yes.

(Testimony of Dave Lytle.)

Q. Did you work on the run that crosses the main highway?           A. Yes.

Q. Who was your head brakeman?

A. Different ones.

Q. Did they flag the crossing?           A. No.

Q. Who were they?

A. That has been a long time ago.

Q. How long ago was it?           A. 1934.

Q. Who did you start out with? Who was your head brakeman when you started out?

A. I have got to think now. I think it was W. J. Williams; I think W. J. Williams was the one.

Q. He is still with the company, is he?

A. Yes.

Q. And who was the next? [144]

A. C. B. Groves.

Q. Who was the next one?

A. I believe it was Wirt Thomas.

Q. Is he still with the company?           A. He is.

Q. (By Mr. Maxwell, continuing) Who else have you worked with, besides Groves, Williams and Thomas?

A. I believe the next one was on our work train. I was out alone on that, if I remember right. That was a long time ago. There was only one brakeman on the work train.

Q. Have you worked as a second brakeman since 1937,—January 1937?           A. Yes.

Q. When was that?

A. Well, at different times when crews were working, mixed-up; when things were slack.

(Testimony of Dave Lytle.)

Q. You have worked as a second brakeman then?

A. Yes. [145] ,

Q. Who were your head brakemen?

A. I don't know now. The way they were mixed-up, we were working around amongst ourselves; that is a pretty hard proposition.

Q. Can you recall any of them?

A. The same men that I named.

Q. Williams, Groves and Thomas?

A. Well, I suppose, yes.

Q. Is W. J. Williams known as "Red" Williams?  
A. Yes.

Q. Did he flag the crossing? A. No.

Q. Did he ever instruct you to flag the crossing?

A. No.

Q. Did C. B. Groves flag the crossing?

A. No.

Q. Did he ever instruct you to flag the crossing?

A. No.

Q. Did Wirt Thomas flag the crossing? [146]

A. No.

Q. Did he ever instruct you to flag the crossing?

A. No.

Q. Am I correct that since 1934 you have never flagged a main highway crossing? Is that correct?

A. Yes.

Q. You have never been instructed to flag a main highway crossing?

A. No; I want to know if that is this crossing or all crossings?

(Testimony of Dave Lytle.)

Q. A main highway crossing.

A. You mean main highway crossings?

Mr. Walker: All main highway crossings, I suppose, he means.

Mr. Maxwell: That is what I said, "main highway".

The Witness: Can you scratch that?

Mr. Maxwell: No.

Trial Examiner Kent: You may answer the question. If you think you haven't answered it fully, go ahead and explain it.

The Witness: Well, I have already answered it.

Trial Examiner Kent: That is all right. You can explain what you mean.

The Witness: That flagging the highway crossing,—I have flagged highway crossings at night, different crossings.

Q. (By Mr. Maxwell, continuing) Main highway? [147] A. Yes.

Q. Did you do that when you were head brakeman? A. I did.

Q. Did you do it when you were second brakeman? A. No.

Q. Were you instructed to flag main highway crossings at night?

A. I was instructed to flag two highway crossings at night.

Q. What two? A. Out at Cook Creek.

Q. Main highway? A. That is right.

Q. How are those crossings designated?



(Testimony of Dave Lytle.)

A. By a main highway sign.

Q. Axford Prairie crossing, is that one of them?

A. No, that is not out at Cook Creek.

Q. What highway was that?

A. Olympic highway [148]

Q. Do those crossings have any other designation such as "Crossing No. 2," for instance?

A. I believe they call them Crossing No. 2—No, Crossing No. 3 and Crossing No. 4.

Q. And who instructed you to flag those crossings?

A. Mr. Alex Polson,—Mr. A. M. Polson.

Q. And when was that instruction given, about?

A. Oh, somewhere in 1937.

Q. What did Mr. Alex Polson say at that time, as near as you can recall?

A. He told me to flag No. 3 and No. 4 crossings at night; when we were on the night job, hauling nights, to flag a train as it would go by the crossings. He told me to go to the front end, get off and flag the train and catch the tail end.

Q. Did he say anything about flagging Crossing No. 1, which has been referred to as the Axford Prairie Crossing?      A. No.

Q. Did he say anything about flagging Crossing No. 2 at the Olympic Highway?      A. No.

Q. Did he say anything about flagging Crossing No. 5?      A. No. 5?

Q. Yes.      A. I have never heard of it.

(Testimony of Dave Lytle.)

Q. No. 4 has been taken out, and what you have designated, [149] perhaps, as No. 5,—what you have designated as No. 4, perhaps, is No. 5.

A. Where is No. 5?

Q. The crossing going into the Indian Reservation at Ozette.

A. Is that No. 5?

Q. What is the other one this side of it?

A. No. 3.

Q. No. 4 has been taken out.

A. There is no No. 4, then?

Q. That is right.

A. What is the question again?

Q. Did he say anything about flagging Crossing No. 5?

A. No. Oh, No. 5?

Q. Yes. Let us get your answer clearly. When you refer to No. 4, you are referring to the Ozette Crossing, which is designated as No. 5?

A. I believe so.

Mr. Walker: Let us start with No. 1 and describe them all the way up. Maybe he doesn't understand them by number.

Q. (By Mr. Maxwell): How long have you worked on the railroad?

A. Since 1934.

Q. What other designation does the Axford Prairie Crossing have?

A. It is always referred to as the "Prairie."

Q. It is referred to as No. 1? [150]

A. It could be; it is the first crossing.

Q. Do you recall in 1937 and 1938, the second crossing from Railroad Camp, on the main Olympic Highway, was taken out?

A. Yes.

(Testimony of Dave Lytle.)

Q. And then the third crossing west from Railroad Camp is designated how?

A. It would be No. 3.

Q. Does that have any other designation?

A. Not that I know of.

Q. Did you ever hear it referred to as Crossing No. 3?      A. Yes.

Q. Do you recall the fourth crossing—do you recall whether the fourth crossing west of Railroad Camp in 1934 was taken out, sometime subsequent to that, in 1935 or 1936?

A. Yes; that is the one that led off below Cook Creek?

Q. That is right.      A. That is right.

Q. That was taken out?      A. Yes.

Q. And the No. 5 crossing,—

A. (Interposing): That is still there.

Q. That is the Indian Reservation at Ozette; that is the crossing there?      A. Yes.

Q. Now, you referred to crossings No. 3 and No. 4. [151]

Q. Was Mr. Alex Polson riding with you on that occasion?      A. No.

Q. What was the occasion of his instructing you?

A. That they had had a crossing accident on the No. 3 crossing.

Q. And you were on that train?      A. I was.

Q. And when did that accident occur?

(Testimony of Dave Lytle.)

A. That was somewhere along in the fore part of 1937; I don't recall the exact date.

Q. That was a crossing accident?

A. It was.

Q. Was Mr. Polson's statement made to you following the accident?

A. I don't recall whether it was made following the accident, or right there.

Q. Well, it was not made before the accident?

A. It was not made before the accident.

Q. What was your job on the train?

A. Head brakeman.

Q. What did you tell Mr. Polson when he told you to flag the crossing?

A. What crossing are you referring to, now?

Q. No. 3 and No. 5.

A. I told him I would.

Q. Had you stopped the train that night on approaching the [152] crossing?

A. Do you want me to explain that accident, how it happened, or just how it went?

Q. I want to know if, on approaching the crossing that night, you stopped the train.

A. No.

Q. Did the engineer, without receiving a signal from you, stop the train?

A. I was right behind the locomotive.

Q. You were behind the locomotive?

A. I was on the locomotive.

Q. And the engineer stopped the train?

(Testimony of Dave Lytle.)

A. He slowed down.

Q. How slow was he going?

A. Possibly 10 miles an hour.

Q. And did you look across the crossing?

Mr. Walker: Mr. Examiner, I object to this line of examination on the ground that it is incompetent, irrelevant, and immaterial. It is all very interesting, but I can't see how the history of an ancient accident in 1937 could possibly help us in this case. The respondent does not allege it, nor is there any connection with an accident made in the answer of the respondent. I can't see its materiality.

Mr. Maxwell: This witness once testified that he was never instructed before. [153]

Q. (By Mr. Maxwell, continuing): Did you flag the crossing?      A. No.

Q. Who was the second brakeman?

A. Al Latonville.

Q. Al Latonville?      A. Yes, sir.

Q. Since 1937, has Bennett Ellingson ever talked to you about flagging a crossing?      A. No.

Q. He never did?      A. No.

Q. Did he at any time?

A. From 1937 to date?

Q. At any time.      A. In 1937, he did.

Q. When was that? [154]

A. One night I got out to flag No. 3, flagging with a load at night.

Q. And what did he say?

A. He told me not to flag the crossing any more.



(Testimony of Dave Lytle.)

Q. When was that?

A. I don't recall the date, but he said it took too long.

Q. Was that before or after the accident?

A. After.

Q. Did he refer to any other crossing?

A. Just No. 3.

Q. Now, on this night the accident occurred, were you pushing the crummy ahead of the train?

A. No; we were pulling everything; the locomotive was headed in the other direction.

Q. When did you first see Mr. Bennett Ellingson on May 21?

A. When he whizzed around this side of the gas station, this side of No. 1 crossing.

Q. And where was he?                      A. In his car.

Q. Where is this gas station?

A. At Axford Prairie.

Q. Did he cross ahead of the train?

A. He did not.

Q. What did he do?

A. He stopped there by the crossing. [155]

Q. Had you ever seen Mr. Ellingson at any crossing prior to that date when the train went by?

A. Yes.

Q. And when was that?

A. Oh, that was different times.

Q. And afterwards, Mr. Ellingson was out at the crossings as the trains crossed over at different times?                      A. Yes.

(Testimony of Dave Lytle.)

Q. And that was No. 1 crossing?

A. I don't recall seeing him at No. 1 crossing.

Q. No. 3?           A. Not No. 3.

Q. No. 5?           A. No. 5, yes.

Q. And that was in the night time?

A. Daytime.

Q. Did you see him at any of the crossings at night?           A. No.

Q. When did you next see Mr. Ellingson on the 21st?

A. I didn't see Mr. Ellingson again on the 21st.

Q. Where were you standing on the crummy car, on the 21st?

A. I was standing next to the window.

Q. Which window?

A. The left-hand side; the engineer's side.

Q. What time of day was it? [156]

A. Approximately about 5:30.

Q. In the morning?           A. In the morning.

Q. And now, assuming, during the day or daylight hours, the train was proceeding in a westerly direction approaching Highway Crossing No. 1, and the crummy was being pushed ahead of the engine, and a car was coming, or an emergency arose that you thought made necessary the stopping of the train, and you wanted to stop the train, what would you do?

A. I would flag the engineer, if the necessity arose.

Q. And what kind of a signal would you give him?           A. I would give him a stop signal.

(Testimony of Dave Lytle.)

Q. Well, demonstrate and we will describe it.

A. (Witness indicating.)

Q. Just one hand?

A. One hand is all that is necessary.

Q. What is a stop signal? Just illustrate.

A. One hand up, or two hands, either one.

Q. You just hold them out and let them drop?

A. That is right.

Q. And if the engineer did not respond to your signal, what would you do?

A. I would pull the air on him.

Q. On the crummy car?

A. Sure, if I could get down and get it. [157]

Q. Where is the air on the crummy car?

A. It is on the end.

Q. On which end? Is it toward the end the train is moving?

A. On the opposite end from the locomotive.

Q. That would be the front end of the crummy car?

A. Yes.

Q. It is the end opposite the dog house?

A. Yes.

Q. That is, the end of the crummy car to which you would have to move to set the air?

A. Yes.

Q. Who has worked as second brakeman with you since 1937?

A. Clayton Reece.

Q. He is one of the complainants in this action?

A. He is.

Q. Who else?

A. Cecil Blankenship.

(Testimony of Dave Lytle.)

Q. Is he still with the company?

A. That I couldn't say.

Q. Who else?           A. Mack Ledbetter.

Q. Is Ledbetter still with the company?

A. I couldn't say as to that, whether he is or not.

Q. Anyone else that you can recall? Do you recall anyone else? [158]

A. I don't recall anybody off-hand.

Q. Did you ever work as head brakeman or second brakeman with Grosclose?

A. I don't recall whether I made any trip with Shorty or not.

Q. Did you ever make any trip with Heck?

A. I might have; that is so long ago it is hard to tell. You get mixed up so much; we are working around here and there.

Q. (By Mr. Maxwell): Where was Mr. Ellingson when you saw him on the 21st?

A. In his car.

Q. How? Was he sitting in his car at the crossing?           A. Going by it.

Q. Did you see him at the crossing?

A. Yes.

Q. Where was he then?

A. He was out at the side of his car. [159]

**C. B. GROVES**

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Walker:

Q. Are you employed at the Polson Logging Company?           A. Yes.

Q. In what capacity?           A. Brakeman.

Q. How long have you been a brakeman for the Polson Logging Company?

A. I went to work November 26, 1926.

Q. From November, 1926, have you been employed as a brakeman at all times?

A. No; there was two months of that time I was running the speeder. [160]

Q. Except for those two months, have you been employed as a brakeman at all times?

A. That is right.

Q. Now have you received any instructions at all from anybody connected with the company concerning the safe operation of the train?

A. No, I never did.

Q. Has anybody connected with the company told you whether or not there were any rules or regulations pertaining to the operation of trains?

A. No.

Q. Do you know Vic Lehman?           A. Yes.

Q. Do you know Bennett Ellingson?

A. Yes.

Q. In April, 1940, what work were you doing?



(Testimony of C. B. Groves.)

A. Well, in April I was switching at Camp No. 2 a part of the time; a part of the time I was at Camp 6; I don't know which part it was.

Q. Are you a member of any labor organization?

A. Yes.

Q. What organization?

A. I am a member of the Brotherhood of Railroad Trainmen.

Q. How long have you been a member of it?

A. Since 1923. [161]

Q. Now, in April, 1940, did you have a conversation with Mr. Vic Lehman?           A. Yes.

Mr. Maxwell: Let us establish who Vic Lehman is, please.

Q. (By Mr. Walker): In April, 1940, where was Mr. Lehman employed?

A. He was running Camp No. 6 for the Polson Logging Company.

Q. And what do you mean when you say he was running Camp?

A. He was the head man; the push.

Q. What conversation did you have with him at that time?

Mr. Maxwell: I will object to that on the ground that it is incompetent, irrelevant, and immaterial, there being no showing that Vic Lehman was authorized to speak for the company with regard to the Brotherhood, or with regard to any matter that is in issue in this case; he was not shown to be an officer. [162]

(Testimony of C. B. Groves.)

Trial Examiner Kent: What is the question?

Mr. Walker: The question is what conversation was had with Mr. Lehman.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Walker): Will you go ahead and describe the conversation?

A. Well, he came out of the kitchen that day, and we were just pulling out. And he came out to me and said, "I want to see you." I said, "All right." So we stepped aside, between the [163] office and the steps going into the kitchen. He said, "I have known you a long time." I had worked with him for many years. He said, "I have known you for a long time, and I just want to say you had better be careful what you say about the Brotherhood; somebody is going to be let out, and it might be you." And I said, "I don't think so."

Q. (By Mr. Walker): Had you seen Mr. Ellingson around Camp 6 that day?

A. No; I had left early in the morning, and I just got back.

Mr. Maxwell: I move to strike this testimony on the ground that Vic Lehman was not authorized,—on the ground that there is no showing that Vic Lehman was authorized to speak for the company; there is no showing that he was an officer of the company, and there is no showing that Vic Lehman has the power to hire and fire; and there is no showing that Vic Lehman had at any time worked in a supervisory capacity over the train crews.

(Testimony of C. B. Groves.)

Trial Examiner Kent: I will reserve ruling on the motion to strike.

Mr. Maxwell: If the Examiner please, I would like to also move to strike,—No, never mind. That is all.

Cross-Examination

Q. (By Mr. Maxwell): Is Vic Lehman still with the company?

A. I don't think so; I have not seen him for sometime. [164]

Q. For how long?

A. I have not seen Vic Lehman since last May, because he was working up in the hills, and when I went up there he was gone then. I have not seen him since he was transferred out at Camp 6.

Q. Did Mr. Lehman say where he got the information?

A. He didn't say where he got it, but, being a friend of mine, he told me to watch myself.

Q. Did you ask him where he got it?

A. I figured he would tell me if he wanted me to know.

Q. You figured he would tell you?

A. Yes, if he wanted me to know.

Mr. Maxwell: I move to strike this testimony on the ground that it is hearsay. The witness has testified as to a conversation with Vic Lehman, who is not authorized to speak for the company, it further appearing at this time that Vic Lehman is no longer an employee of the company, and, so

(Testimony of C. B. Groves.)

far as I know, we cannot find him. That is the most damaging kind of hearsay that can be given, where we have no opportunity to call the witness to refute the testimony.

Trial Examiner Kent: Well, I will hold my ruling in abeyance. I will enter my ruling later.

Q. (By Mr. Maxwell): Do you know where he he is now? A. No, I don't know.

Mr. Maxwell: No further questions. Just a moment. I [165] will take that back.

Q. (By Mr. Maxwell): Who is George Gros- close? A. Shorty Gros- close?

Q. Yes. A. Well, he is——

Q. Well, is he employed at the Polson Logging Company? A. Yes.

Q. And was he so employed in May, 1940?

A. Yes.

Q. What was his position?

A. In May, 1940, he was train master.

Q. Did you ever receive any instructions from him about flagging crossings?

A. No, sir; I never received any instructions from Shorty Gros- close, because he received a lot from me before he went and became train master.

Q. Were you his head brakeman?

A. That is right.

Q. When the train was proceeding across the main highway, pushing the crummy, did you flag the crossing?

A. Depends on what highway.

(Testimony of C. B. Groves.)

Q. The main highway.

A. No. 1 crossing has never been flagged since I have been there, but No. 3 and No. 5 have.

Q. Who told you to flag them? [166]

A. Who told me?

Q. Yes.

A. Well, they were never flagged until someone was killed, unless we were pushing cars.

Q. Unless you were pushing cars?

A. Yes.

Q. If you were pushing cars, did you flag No. 1?

A. That is right.

Q. If you were pushing cars?

A. Yes.

Q. How would you flag No. 1?

A. If we had 30 or 40 cars, we would usually stop and flag at the head end, and then jump on as the train went by.

Q. Was that per instructions?

A. That was a form of habit formed years ago; they didn't haul them then, they pushed everything.

Q. How did you start flagging?

A. With my hand.

Q. You testified that they had never flagged prior to 1937.

A. No, I did not; I said when they were pushing cars, they were flagging all the time.

Q. Before 1937?

A. Yes.

Q. Were you ever instructed to flag a crossing?

A. No; I was not working as a second brakeman; I was the first [167] brakeman.



(Testimony of C. B. Groves.)

Q. Didn't you start in as a second brakeman?

A. Yes.

Q. Didn't the head brakeman ever instruct you then?

A. No; he didn't tell me, but because he did it, I did it.

Q. On May 21, 1940, where were you working?

A. I think it was at Camp 2.

Q. Did you come to Railroad Camp that day?

A. No, sir.

Q. The next day?                      A. No.

Q. You did not?

A. When we were working at 2, we tied up there and stayed there sometimes a month at a time.

Q. When you were pushing the crummy, how did you flag the crossings?

A. We didn't flag unless we saw a car coming, and we went out to see if the engineer saw it, and if the engineer saw it, we did not flag.

Q. Where did you flag?

A. We were out on the crummy.

Q. Where on the crummy?

A. Just out by the side of the grab iron.

Q. Where is the grab iron with respect to the dog house?

A. On each side of the dog house. [168]

Q. On the back end?

A. No, on each side.

Q. Near the rear end?

(Testimony of C. B. Groves.)

A. On the side; near both ends.

Q. You said on the side of the dog house.

A. Yes.

Q. That is where you stayed as the train was backing up and moving in a westerly direction?

A. Yes.

Q. You would stand on the south side of the train, and you could see north and south through the dog house?

A. Not through the dog house.

Q. How would you see?

A. By the corner of the dog house.

Trial Examiner Kent: This grab iron is on the corner of the dog house?

The Witness: It runs from the corner about 20 inches, and there is another one in about 20 inches.

Q. (By Mr. Maxwell): The train is moving in a westerly direction pushing the crummy?

A. Yes.

Q. And the dog house would be on the east end of the crummy?      A. Yes.

Q. And the engineer would be on the south side of the train?      A. That is right. [169]

Q. And the grab iron on the dog house was where with respect to the east end of the dog house?

A. It would be on both ends of the dog house. The bolt goes through on the corner post, about 2 inches from the edge of the dog house—the bolt that holds the grab iron on.

Q. And if the engineer did not respond to the signal, what would you do?

(Testimony of C. B. Groves.)

A. I would probably jump off, if I saw he was going to hit anything.

Q. And then would you make an emergency application of the air?

A. That would be too far. I wouldn't ride the crummy with air cars connected——

Q. Did Mr. Groschlose instruct you about flagging the crossing?

A. One day, when I came in, he said, "You will have to flag the crossing." I said, "All right, I will." And then I said, "I will have to stop the train in order to do it." He said, "No, not to stop the train." I said, "That is the only way you can do it." He said, "You have to flag it, because Bennett said to flag it." I said, "I will stop and flag it." And he said, "Don't stop." And I said, "I can't flag it without stopping."

Q. And where was that—strike that. When was that instruction given with respect to May 1940?

[170]

A. I think it was along in June, 1940, or 1941; no, June, 1940.

Q. Prior to that, had you been instructed?

A. No.

Q. Were you interrogated after May 21 and warned about flagging the crossing?

A. That is the only time I was ever warned, that I remember, except as to No. 3 and No. 5. That is the exception.

Mr. Maxwell: That is all.

(Testimony of C. B. Groves.)

Trial Examiner Kent: If you were to flag the crossing, how would you do it?

The Witness: We would pull up to it, get off and flag it while the train was going by, and catch the other end.

Trial Examiner Kent: You didn't flag the crossings?

The Witness: Sometimes you would have to flag them; however——

Trial Examiner Kent: What did you flag with? Did you use a flag?

The Witness: Sometimes you would have a flag; but, if not, you would just use your hands.

Trial Examiner Kent: That is, giving directions to the engineer?

The Witness: That is right.

Trial Examiner Kent: Of course, if you saw an automobile approaching, you would warn the approaching automobile?

The Witness: Well, you would have to use your own judgment [171] on that, anyway. I don't think any of those engineers are going to run over anybody if they can see them.

#### Redirect Examination

Q. (By Mr. Walker): What were your instructions concerning crossings No. 3 and No. 5? Was it day or night, or both?

A. We never flagged during the daytime unless we had a work train to shove, with five or six cars, because the No. 3 crossing, right below there,

(Testimony of C. B. Groves.)

is a pretty bad curve. We always protected that, without any instructions; but when we were hauling cars, just on a regular log run—and I was on that job for about seven years and had one accident——

Q. You had one accident? A. Yes.

Q. When was that?

A. It was in 1934; I believe it was in 1934.

Q. Crossing the crossing? A. Yes.

Q. (By Mr. Walker): Was it your instruction to flag the crossing before or after the accident? When were those in- [172] structions given?

A. Either one.

Q. Perhaps you don't understand my question. When were those instructions given?

A. Oh, I don't know when they were first given to us.

Q. Were you to flag the crossing at all times?

A. That was during the time we were pushing cars. It came down from times before. Now, however, in later years, we have been hauling everything, and we could not flag the crossing because the engine was ahead all the time; and we couldn't flag them without stopping. There would be no necessity, because the engine was ahead.

Q. Were you ever told at any time what to do at Crossing No. 3?

A. No. 3 and No. 5. When Mr. Lytle quit, I went back on the same job, and they had been getting off to flag the crossing both ways until the



(Testimony of C. B. Groves.)

train cleared the crossing, and you would have to walk the length of your train; and I came down and asked Mr. Arnold Polson about it, and he said he didn't know what we could do. But he said that he had thought about getting reflectors. And he told me at that time that he heard that the highway was going to put—that the highway department was going to put caution signs out there, and that perhaps we would have to do likewise. So when Mr. Ellingson took the superintendency of the trains, he followed us quite a bit and watched everything, and one day he said, "I don't believe you should [173] stop to flag the crossings when going across the crossings. Just go ahead," and I took it upon myself, that I would light a piece of oil waste as a warning, but I couldn't keep that up during the fire hazard season. I was not told to do that.

Q. Where is the crummy located with reference to the engine?

A. The crummy is a part of the engine; it is attached to the engine, you might say.

Q. Approximately how many cars would you have to have in addition to the crummy when you would flag the crossing?

A. One or more than the crummy; then we would flag the crossings. That was at that time, years ago.

Q. How long has it been since your train has pushed a string of cars ahead of it out of Railroad Camp, heading out of Railroad Camp?

(Testimony of C. B. Groves.)

A. Well, I have not headed out of Railroad Camp with a train, except about a month ago when I hauled gravel for three days. I haven't done that for some time. So I have not headed out of Railroad Camp for five or six months with a train of cars. I don't remember that I have.

Mr. Walker: You mean, when the engine was pushing a train of cars?

The Witness: Yes. That has been a long time, I can't remember when I pushed any cars out of there.

Q. (By Mr. Maxwell): Has it been two or three years? [174]

A. I have pushed cars over the crossing a number of times, but I don't remember whether it was in 1940. I have not been on the job there for some time.

Q. (By Mr. Maxwell): Maybe you misunderstand me. How long has it been since you were on a train that pushed a string of skeletons or disconnected logging trucks out of Railroad Camp?

A. Well, it has been since 1935. Along in 1934 and 1935 they started hauling the cars. They shoved everything up until then. It was 1934 when Morgan came down. He got us to hauling the cars. Before that, we shoved them.

Q. By hauling the cars, what do you mean?

A. I mean the engine would be ahead, with the logs behind, and the engine leading the cars of logs.

Q. And by shoving the cars, you mean what?

A. The engine would be on the other end, pushing them [175]

AFTERNOON SESSION

(Whereupon the hearing was resumed, at 1:30 P.M., pursuant to the taking of the noon recess.)

Trial Examiner Kent: The hearing will be in session.

Mr. Walker: I will call Mr. Wicklund.

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JOHN WICKLUND

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker) Your name is John Wicklund? A. Yes sir.

Q. You live in Hoquiam, do you?

A. Yes sir.

Q. What is your occupation?

A. Locomotive fireman and engineer.

Q. Have you been employed by the Polson Logging Co.? A. Yes.

Q. When did your employment with them begin?

A. On the railroad or otherwise?

Q. On the railroad? A. 1936.

Q. And since 1936, what railroad work have you been doing on the Polson line?

A. I have been on the Polson line.

(Testimony of John Wicklund.)

Q. You have been an engineer or fireman all the time? [176]

A. Yes; but I ran the speeder for a while.

Q. During all of the time that you have been employed by the Polson railroad service, have you received any instructions from either Mr. A. M. Polson, Mr. F. A. Polson, or Mr. Ellingson on the matter of the safe operation of trains?

A. None other than from Mr. Bennett Ellingson.

Q. What did he tell you?

A. To be sure to sound the whistle before you approach a crossing.

Q. Have you ever been told about any rules or regulations concerning the safe operation of trains by any of the officials of the Polson Logging Co.?

A. No sir.

Mr. Walker: That is all.

#### Cross Examination

Q. (By Mr. Maxwell) Do you know a Mr. Gros-  
close? A. Yes.

Q. (By Mr. Maxwell, continuing) Do you run  
in and out of railroad camp?

A. Yes, we do now.

Q. I beg your pardon? [177] A. Yes.

Q. Did Mr. Grosclose ever warn you about  
safety regulations? A. No.

Q. Were there certain safety standards to be ob-  
served in the operation of the train?

The Witness: Well, I really don't understand  
the question.

(Testimony of John Wicklund.)

Q. (By Mr. Maxwell, continuing) What part of the question [178] don't you understand?

A. Just what do you mean, the State or the Polson safety rules?

Q. Well, let us take the State.

A. Well, there are none of them posted.

Q. And when you referred to State regulations, what regulations did you have in mind? The logging safety standards put out by the Department of Labor and Industries of the State of Washington?

A. Yes.

Q. Do you have a copy of those standards?

A. I did have, yes.

Q. I beg your pardon?

A. I did have them.

Q. Showing you what has been marked for identification as Board's Exhibit No. 1,—

Mr. Walker: Respondent's Exhibit No. 1.

Q. (By Mr. Maxwell, continuing) Showing you what has been marked for identification Respondent's Exhibit No. 1, is that what you referred to?

A. Yes, I have had them.

Q. And when did you get those?

A. I presume at the Polson Logging Co., right in the office.

Q. In the office of the Polson Logging Co.?

A. Yes. [179]

Q. Which office of the Polson Logging Co.?

A. Railroad camp.

Q. Railroad camp?

A. That is right.



(Testimony of John Wicklund.)

Q. Who gave them to you?

A. That I don't remember; I probably picked them up at the desk.

Q. Did you read those safety standards?

A. Yes.

Q. Were you instructed to read the safety standards?           A. No.

Q. Were those safety standards to be observed?

A. Yes.

Q. I beg your pardon?           A. I have.

Q. In addition to the safety standards put out by the State Department of Labor and Industries under the statutes of the State of Washington, the Polson Logging Co. had certain other safety measures that they required to be observed?

A. Not as I have seen.

Q. I beg your pardon?

A. I have not seen any.

Q. Have you ever heard of any?           A. No.

Q. How long have you been pulling a train as an engineer? [180]

A. For Polson Logging Co.?

Q. Yes.           A. Well, about 2½ years.

Q. Have you crossed the Axford Prairie crossing?           A. Yes.

Q. Have you crossed that pushing the crummy ahead of the engine?           A. At times.

Q. Does the trainman flag that crossing?

A. No sir.

Q. Do you watch them for a signal from them?

(Testimony of John Wicklund.)

A. You watch for the brakeman and the highway, both.

Q. Yes. You watch the brakeman for a signal? You watch for a signal from the brakeman?

Mr. Walker: He didn't say that.

Q. (By Mr. Maxwell, continued) I am asking you.

Mr. Walker: He didn't say that.

Mr. Maxwell: I object to the interruptions. He may redirect when he comes around to it.

Mr. Walker: If you are asking him, that is all right.

Mr. Maxwell: I object to the interruption of counsel on the ground that his objection is to inform the witness of the proper answer that he wishes him to give.

Trial Examiner Kent: It might be a better policy to just state your objections, and then take the matter up on [181] redirect examination.

Mr. Walker: Well, I object on the ground that he is misquoting the witness.

Trial Examiner Kent: Will you read the prior questions and answers, Mr. Reporter, and the pending question?

(Thereupon the questions and answers referred to were read aloud by the reporter as above recorded.)

Q. (By Mr. Maxwell, continuing) You watch for a signal?

(Testimony of John Wicklund.)

A. You watch for a signal from the trainman, and you also watch the highway.

Q. That is true, is it not, of Axford crossing?  
Crossing No. 1? A. Yes.

Q. That is also true of crossing No. 3?

A. Yes.

Q. That is true of crossing No. 5?

A. Yes.

Q. That is true where the train is operating over those crossings in the daytime? A. Yes.

Q. Do you know Mr. Bennett Ellingson?

A. Yes.

Q. Did you ever see Mr. Bennett Ellingson at any of the crossings when the train was pulling cars? A. When I was at the crossings?

Q. I mean, the main highway crossings of the railroad, Nos. [182] 1, 3 and 5?

A. Not as I recollect.

Q. Did Mr. Bennett Ellingson ever instruct you to approach the state highway and railway crossings with the train under control?

A. None other than to be sure to sound the whistle when the train comes to the crossing.

Q. Did he say anything about having the train under control? A. No.

Q. Did Mr. Groschlose ever tell you that?

A. No. [183]

#### Redirect Examination

Q. (By Mr. Walker:) Mr. Wicklund, you are an engineer? A. Yes.

(Testimony of John Wicklund.)

Q. And when you are an engineer and you are approaching Crossing No. 1, you are watching the highway and the brakeman, both; is that correct?

A. Yes.

Q. Now, as you are approaching Crossing No. 1 and you see some traffic on the highway, and it appears, from your judgment, that an emergency is liable to arise, what do you do?

A. I would stop.

Q. Would you do that whether the brakeman gives you a signal or not? A. Yes. [184]

Q. (By Mr. Walker:) When did you get your copy of that? A. When?

Q. Yes. A. I don't recall exactly.

Q. Was it before or after Mr. Reece or Mr. Lytle were discharged? A. Before.

Q. How long before? A. I could not say.

Q. Did anyone connected with the company give the book to you? A. No. [185]

Q. Did anybody connected with the company ask you if you had a copy of it? A. No.

Q. Did anybody connected with the company ask you if you had ever studied it, or if you had ever studied such a book of rules?

A. No, sir; not that I recall.

#### Recross-Examination

Q. (By Mr. Maxwell:) Mr. Wicklund, if you were approaching a crossing and you did not perceive immediate danger at the crossing, would you

(Testimony of John Wicklund.)

watch for a signal from the brakeman to see if he had perceived any danger?

A. You naturally watch both.

Q. You do not depend upon your own perception of danger or immediate threat of danger at a crossing?

Mr. Walker: I will object to that.

Trial Examiner Kent: Reframe the question. [186]

Q. (By Mr. Maxwell:) You depend, also, upon the brakeman to watch for danger at a crossing?

Mr. Walker: I will object to that as repetitious.

Trial Examiner Kent: The answer may be taken.

A. To a certain extent.

Mr. Maxwell: That is all.

#### Redirect Examination

Q. (By Mr. Walker:) Who has charge of the movement of the train when you are engineer?

A. I do.

Q. (By Mr. Stevens:) Assuming you are approaching a crossing in daylight, west-bound, and that you are engineer, with the engine backing up, and you have the crummy car ahead of you, and no brakeman is in sight; would you proceed or stop, or would you depend on your own vision? What would you do?

Mr. Maxwell: I will object to that on the ground that it is not proper redirect.

Mr. Stevens: You opened it up.



(Testimony of John Wicklund.)

Trial Examiner Kent: The answer may be taken.

Mr. Stevens: Will you read the question, please? [187]

A. I would depend on my own judgment.

Mr. Stevens: That is all.

Recross-Examination

Q. (By Mr. Maxwell:) What do you mean by that? A. What do I mean?

Mr. Maxwell: Will you read the last question that Mr. Walker asked, Mr. Reporter?

(Thereupon, the question referred to was read aloud by the reporter as follows:)

“Question: Who has charge of the movement of the train when you are engineer?”

“Answer: I do.”

Q. (By Mr. Maxwell:) What do you mean by that?

A. The man at the throttle controls the train while it is in motion.

Q. You mean, if you were the engineer, you would have the power to start and stop the train?

A. Yes.

Q. Isn't it true that the head brakeman is in charge of the train, and that he secures the orders and passes them on to you?

A. That is true, yes.

Q. And you would not move the train in any direction without [188] receiving the orders from the head brakeman or the other brakeman?

A. If you were in motion?

(Testimony of John Wicklund.)

Q. If you were stopped, you would not proceed without having orders from the brakeman?

A. No.

Q. As you approach a junction point, who secures the orders for the further movement of the train to the next junction point?

A. The brakeman.

Q. And he passes those along to you?

A. That is right.

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T. C. CORRIGAN

was called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker:) What is your name?

A. T. C. Corrigan.

Q. How do you spell your name?

A. Corrigan (spelling). [189]

Q. Where do you live, Mr. Corrigan?

A. Polson Railroad Camp.

Q. What is your occupation?

A. Locomotive engineer.

Q. Are you employed at the Polson Logging operation?      A. Yes, sir; I am.

Q. How long have you been employed there?

A. Since the day after Labor Day, 1934.

(Testimony of T. C. Corrigan.)

Q. During all of that time, what has been your employment with the Polson Logging Company?

A. Locomotive fireman and engineer.

Q. Did you work for the Polson Logging Company on May 21, 1940? A. Yes.

Q. And what time did you begin work on that day? A. I am not sure.

Q. When you did begin work that day, what was the first thing you did?

A. I went out in the yard and got a string of empties, I believe.

Q. And where were the empties on the train?

A. Behind; we were pulling them.

Q. How many empties did you have?

A. I believe around twenty.

Q. What type of cars were they?

A. Low trucks. [190]

Q. Now, when you say you were pulling those cars, in which direction was the engine facing?

A. The engine was backing up.

Q. Was there anything immediately ahead of the back end of the engine? A. Yes.

Q. What? A. The crummy.

Q. What engine did you have on May 21, 1940?

A. No. 18,—locomotive No. 18.

Q. And what tender did you have attached to No. 18?

A. The tender that is now on 101.

Q. After making up your train from the railroad yards, what did you do?

(Testimony of T. C. Corrigan.)

A. I suppose we stopped at the railroad camp, and then we continued toward Camp No. 4 junction. [191]

Q. (By Mr. Walker:) Was it daylight when you left the yards? A. Yes, it was.

Q. After leaving the yards on your way toward Camp No. 2, did you come to a highway crossing?

A. Yes.

Q. What is the first one you come to?

A. Crossing No. 1.

Q. (By Mr. Walker:) Well, what is there this side of the Axford Prairie Crossing?

A. A service station and a store.

Q. Now, at the time the train had reached to a point about opposite the service station and the store, how fast was the train traveling; approximately? [192] A. Approximately ten miles an hour.

Q. After proceeding westward to a point opposite the service station, what is the next thing you did?

A. I blew the whistle before I got to the service station, continuously to the crossing.

Q. As you approached the crossing, what else did you do besides blowing the whistle?

A. The train was decreasing speed to a certain point.

Q. How was the visibility at the crossing?

A. Good visibility.

Mr. Maxwell: I move that the answer be

(Testimony of T. C. Corrigan.)

stricken. I move [193] that both the question and answer be stricken.

Trial Examiner Kent: Read the question, and also read the answer.

(Thereupon, the last question and answer were read aloud by the reporter as above recorded.)

Trial Examiner Kent: The record may remain.

Q. (By Mr. Walker:) That morning, as you approached the crossing, where were you looking?

Mr. Maxwell: I will object to this upon the same grounds, Mr. Examiner; and, in order to save time, I would like to have it understood that my objection,——

Trial Examiner Kent: (Interposing) Goes to the entire line.

Mr. Maxwell: (Interposing) Goes to this line of questions, and all similar questions.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Walker:) As an engineer going west out of Railroad Camp, which side of the cab were you on?

Mr. Maxwell: May I interject: Is it understood that my objection goes to all the questions?

Trial Examiner Kent: Yes. The objection may go to the line.

The Witness: Shall I answer?

Trial Examiner Kent: Yes, you may answer.

Q. (By Mr. Walker:) On what side? [194]

A. On the left side.



(Testimony of T. C. Corrigan.)

Q. On the left side of the train?

A. That is right.

Q. In that position, where is the left side of the train with respect to the tracks? Where is the highway with respect to the track?

A. The engineer is next to the highway.

Q. And how close is the highway to the track, approximately?

A. Some fifty feet.

Q. The track, as it approaches Axford Crossing, —Strike that. The train, as it approaches the Axford Crossing is going in a westerly direction; is that correct?

A. Yes.

Q. And in which direction is the highway running along that point prior to where the highway crosses the railroad track and forms crossing No. 1?

A. It is parallel to the track.

Q. For about how long a distance is the highway parallel?

A. On the left-hand side, some three miles, I would say.

Q. Now, as the highway hove into sight that morning, where was your attention directed?

A. At the highway and at the track, too.

Q. Did you observe anything on the highway?

A. Mr. Ellingson was the only one I could see.

Q. About how fast would you estimate Mr. Ellingson was traveling [195] at that time?

A. He traveled along side of the engine for possibly half a mile.

Q. And then what did he do?

(Testimony of T. C. Corrigan.)

A. He stopped at the crossing.

Q. Where was the train with respect to the crossing at the time Mr. Ellingson drew up and stopped at the crossing?

A. At the time he stopped, we were just starting across the highway.

Q. And where was Mr. Ellingson as you crossed the crossing?

A. He was in his car at the time.

Q. Now, was it sun light at the time you came into sight of the highway that morning?

A. I don't recall the sun; but it was good visibility.

Q. When you are sitting in the cab of engine No. 18, is your vision to the right obstructed by the No. 101 tender?

A. To a certain extent, yes.

Q. As you approach Axford Crossing,—Let us make it specific. As you approached Axford Crossing on May 21, did you look to the highway to the right?

A. Ordinarily I would look at the fireman to see that he was watching.

Q. Did you that morning?

A. I don't doubt that I did. It becomes habitual; I don't remember that morning specifically. [196]

Q. What was he doing? Do you know?

A. He was looking towards the highway.

Q. Approaching Axford Prairie Crossing, pulling approximately twenty empty cars, traveling

(Testimony of T. C. Corrigan.)

approximately ten miles an hour, if an emergency arose, how long would it take you to stop?

Mr. Maxwell: I will object to that on the ground that it is totally immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: Shall I answer?

Trial Examiner Kent: Yes, you may answer.

A. I would say probably 200 feet.

Q. (By Mr. Walker:) As an engineer, when you are observing both the highway and the track ahead, when you see an emergency arise, what do you do?

A. I use my best judgment under the circumstances.

Q. Have you ever been given any instructions from any of the supervisors of the Polson Logging Company concerning the safe operation of the railroad?

A. At one time I was told to blow more whistles; I believe that is all.

Q. And who told you that?

A. Mr. Ellingson.

Q. Has any of the supervisory officials or the management of the Polson Logging Company ever told you of any rules or regulations concerning safe operation of the train? [197]

#### Cross-Examination

Q. (By Mr. Maxwell): On the morning of May 21, 1940, approaching Axford Crossing, did you see Mr. Lytle or Mr. Reece out on the crummy?

(Testimony of T. C. Corrigan.)

A. No, sir.

Q. Were they inside?           A. Yes, sir.

Q. Did you look for a signal from them?

A. They were not in sight; I was looking in that direction.

Q. Have you gone across there with other head brakeman besides Mr. Lytle?           A. Yes.

Q. Prior to May, 1940?           A. Yes.

Q. On occasions, when you crossed the crossing, prior to May, 1940, what other head brakemen were in charge of the train?

A. Red Williams, for one.

Q. Did Mr. Williams ride out on the crummy, inside? [198]

A. All head brakemen, I would say, are out there most of the time; I couldn't say that any of them are out there all the time.

Q. You mean when you say, "Most of the time," in crossing the highway crossing?           A. Yes.

Mr. Maxwell: That is all. [199]

Q. (By Mr. Stevens): Will you describe this particular crossing when you are going west-bound, as to the engineer's visibility in each direction—the length that you could see in each direction?

A. From the engineer's side of the train, you can see almost an unlimited distance down the highway. From the fireman's side, the fireman can see, I would estimate, a quarter of a mile until you are, I would say, three hundred feet from the crossing. The engineer can see the traffic,—the engineer can see the

(Testimony of T. C. Corrigan.)

traffic, I believe, on that side of the track very good up until about three hundred feet of the track,—of the crossing.

Q. You mean the other side of the crossing when you are going west-bound,—you mean you can see the cars coming toward the crossing for three hundred feet?

A. No; you can't see the cars come except the last three hundred feet. The fireman, of course, could see that. For the engineer, it might be a blind spot or something like that.

Q. Let's, to clarify it,—I don't quite understand what you referred to when you spoke about the three hundred feet from the crossing. [200]

A. Well, I don't think I stated it clearly. I mean, when you get to where you are, I would say, three hundred feet from the crossing, the fireman can see for about a quarter of a mile. I will put it that way.

Trial Examiner Kent: By the way, as I recall your testimony, the highway runs in a generally parallel direction for some distance, parallel to the track? The Witness: Yes.

Trial Examiner Kent: What sort of a turn does it make at the crossing?

The Witness: Well, I would say about sixty degrees; possibly a little sharper than that.

#### Recross-Examination

Q. (By Mr. Maxwell): This highway runs in a westerly direction, parallel to the track? [201]

A. Yes.



(Testimony of T. C. Corrigan.)

Q. And then it turns in a northerly direction, does it not?      A. Yes.

Q. And then right after the turn it crosses the track?      A. Yes.

Q. And then on the north side of the track, the underbrush has been cut back for a distance; is that correct?      A. Yes.

Q. At a point five hundred feet from the crossing down the track, how far did you say that you could see up the highway on the north side of the track?

A. For a quarter of a mile, did I say?

Q. That you could see up the highway a quarter of a mile, which roughly, is 1600 or 1700 feet?

A. That is my estimate, yes.

#### Redirect Examination

Q. (By Mr. Walker): Mr. Corrigan, are there any obstructions along the railroad right-of-way between the points where the highway hove into view and begins to parallel the railroad track to the point where the highway crosses over the railroad track?

A. There is one about half a mile from the crossing.

Q. And what is that?

A. There is a cut there.

Q. How long a cut is it? [202]

A. Several hundred feet there; you can't see the road.

Q. You can't see the road for several hundred feet?      A. For several hundred feet.

Q. (By Mr. Walker): Was there any traffic on

(Testimony of T. C. Corrigan.)

the highway that morning, on either side of the crossing, other than Mr. Ellingson?

A. There was no traffic. [203]

Mr. Walker: Mr. Pauly.

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PAUL PAULY

was called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Q. (By Mr. Walker): Will you state your name?

A. Paul Pauly.

Q. Where do you live, Mr. Pauly?

A. Aberdeen.

Q. Aberdeen, Washington? A. Yes, sir.

Q. What is your occupation? A. Brakeman.

Q. Are you employed by the Polson Logging Company? A. Yes.

Q. How long have you been employed by them?

A. About two and one-half years.

Q. During that time, what has been your work?

A. Head brakeman.

Q. Do you know a man by the name of Bennett Ellingson? A. Yes.

Q. In April or May, 1940, were you head brakeman? A. Yes.

Q. Are you a member of any labor organization? [204]

A. I am.

(Testimony of Paul Pauly.)

Q. What organization?

A. The Trainmen; the Brotherhood of Railroad Trainmen.

Q. Have you ever had a conversation with Mr. Ellingson concerning the Brotherhood?

A. Well, a short one, I guess.

Mr. Maxwell: Speak up so I can hear you.

The Witness: A short one.

Q. (By Mr. Walker): Where did that take place?

A. In the office at the railroad camp; the bank office, I guess.

Q. And what was said?

A. Well, he asked me what I thought of the Brotherhood, and I said that his guess was as good as mine about that. That is about all that was said about it.

Q. Have you related all that you can recall that was said at that time? [205]

Q. (By Mr. Walker): At this conversation at the railroad office, Mr. Pauly, did Mr. Ellingson also ask you how the Brotherhood organizing was progressing?

A. I don't exactly recall myself, whether there was any more than what I have already said about that. [206]

Q. (By Mr. Walker): How did this conversation come up? A. I don't exactly know.

Q. About what time of day was it?

A. I think I just got through work, and I came

(Testimony of Paul Pauly.)

in, and we got to talking about changing jobs; he spoke to me about going on a different engine the next day. That is about all I can recall.

Q. Now, when you arrived at the railroad camp from your home in Aberdeen, did you wear the same clothes on the job?

A. Sometimes I do, and sometimes I don't; it depends on the weather.

Q. Where do you change your clothes when you do?

A. Well, we have a kind of an ante-room by the office there; sometimes that is it. That is where we change our clothes, mostly.

Q. Where, with respect to the office, did this conversation take place?

A. Right off the office there, in this little room.

Q. Now, what were you doing at the time?

A. I was changing clothes, I think, at the time.

[207]

Q. And Mr. Ellingson came up and started to talk about giving you another train? A. Yes.

[208]

Q. Have you related all that was said between you and Mr. Ellingson in the change house?

A. I think I have.

Q. Now, does it refresh your memory that Mr. Ellingson asked you how the Brotherhood organizing was progressing, during the course of that conversation? [211]

A. No, it does not, really. He might have said

(Testimony of Paul Pauly.)

that, but I can't remember it. About the only thing I can remember is what I said about it.

Q. (By Mr. Walker): Has Mr. Ellingson, Mr. F. A. Polson, or Mr. A. M. Polson told you of any rules or regulations concerning safe operation of their trains?

A. Well, once.

Q. When was that?

A. To be sure to ride all cars that were pushed across the crossing. [212]

Q. And when was that?

A. I think about last April.

Q. Was it before or after Mr. Lytle and Mr. Reece were discharged?      A. After.

Mr. Walker: That is all.

#### Cross-Examination

Q. (By Mr. Maxwell): Do you know Mr. Gros-close?

A. Yes, I do.

Q. Prior to May 21, 1940, did he ever instruct you about riding the crummy car, in plain sight of the engineer when it was pushed across the crossing?

A. Not that I recall.

Q. Now, this accident that you referred to,—it wasn't an accident? This incident that you referred to where Mr. Bennett Ellingson or Mr. A. M. Polson, and Mr. F. A. Polson told you to be sure to ride the cars that you were pushing across the crossings,—what fixed in your mind that it was after the discharge of Mr. Lytle and Mr. Reece?



(Testimony of Paul Pauly.)

A. Well, the way the conversation come up.

Q. How is that?

A. Well, the way the conversation come up, I know it happened only a few months ago.

Q. Were you running into Railroad Camp in May, 1940?

A. Well, I was working there, but I don't recall what run I was [213] on.

Q. Do you recall Mr. Bennett Ellingson and Mr. Groscluse interrogating the head brakeman about the rule?

A. What rule?

Q. About the rule in regard to flagging highway crossings? Did they interrogate you?

A. No, sir.

Q. Did you start in with the company as a head brakeman?

A. Yes, sir.

Q. When you started in, were you instructed as to the operations of the trains by the superintendent or the train master?

A. Well, not very much that I can recall. I don't believe there was anything definite said that I can remember.

Q. Had you worked on the railroad there before?

A. Not at Polson's.

Q. Not at Polson's?

A. No.

Q. Did they give you any instructions as to the system of orders used by the company?

A. A telephone dispatching system that I was familiar with before I went there.

Q. Did they give you any instructions as to safety measures?

A. No.

(Testimony of Paul Pauly.)

Q. Have you flagged the crossings when the engine was pushing [214] the crummy or cars ahead of it?      A. I have.

Q. You have been out on the crummy, in sight of the engineer?      A. Yes.

Q. Were you instructed to do that?

A. No, sir.

Q. What led you to do it?

A. I think I am familiar with trains and feel I know what I ought to do.

Q. I beg your pardon?

A. I think I am familiar with trains, and therefore I felt that it should be done.

Q. Are you familiar with the loggers' safety standards issued by the Department of Labor & Industries of the State of Washington?

A. I don't think I ever read this one (indicating booklet).

Q. Have you ever read similar standards?

A. Well, there is an older one that I think I have read.

Q. The 1936 edition?

A. I don't think I have ever seen this one here (indicating).

Mr. Maxwell: That is all.

Redirect Examination [215]

Q. (By Mr. Walker): Where did you get the old one that you mentioned?

A. I think at Green River.

Q. Not at Polson's?      A. Not that I recall.

(Testimony of Paul Pauly.)

Q. You have never seen one since you have been at Polson's?      A. Not that I recall.

Q. Mr. Pauly, these times when you have ridden out, in sight of the train crew, was that when you were pushing more cars than the crummy ahead?

A. Well, at all times whether it was more or not.

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### SAM KEY

was called as a witness by and behalf of the Board, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Walker:

Q. Will you state your name?

A. Sam Key.

Q. Where do you live? [216]

A. At Polson's Railroad Camp.

Q. And what is your occupation?

A. I run a locomotive for the Polson Logging Company.

Q. How long have you done that?

A. I think I have been running for about six years up there.

Q. Are you a member of any labor organization?      A. Yes.

Q. What organization?

A. I belong to the Brotherhood of Locomotive Firemen and Engineers. [217]

(Testimony of Sam Key.)

Q. (By Mr. Walker): I hand you what is marked as Board's Exhibit No. 4 and ask you if your signature appears on that there?

A. Yes, that is my signature; I signed for the Brotherhood of Locomotive Firemen and Engineers.

Q. Was that letter ever delivered to the Polson Logging Company?

A. That letter, or one similar to it; I think we signed three copies; that was taken by Mr. Lytle and delivered to Mr. Polson.

Q. Which Mr. Polson?

A. Mr. A. M. Polson.

Q. About when was that?

A. I think it was in May, 1940.

Q. Was anybody else with you?

A. I think Mr. Lytle, Mr. Brant, Mr. Reece, Mr. Williams, and myself.

Q. Who did the committee meet with?

A. They met with Mr. Arnold Polson, Mr. Alec Polson, and Mr. Bennett Ellingson.

Q. About what time of day did that meeting take place?

A. In the forenoon, about eleven o'clock, I would say.

Q. Could you state where the meeting was held? [218]

A. It was held in Mr. Polson's office in Hoquiam.

Q. And what occurred at that meeting?

A. Well, we met with Mr. Polson, and Mr. Lytle

(Testimony of Sam Key.)

gave him the agreement that we wanted signed, or wanted to negotiate, and he took the agreement and looked at it, and we talked awhile. Do you want me to go into detail?

Q. Before taking membership in the Railroad Brotherhood, had you ever held membership in any other labor organization?

A. Yes. I belonged to the Sawmill & Timber Workers, A. F. of L., and the C. I. O.

Q. All right. Will you go ahead and state in your own words everything that was said by the different parties at that meeting?

A. Well, at the meeting there we asked Mr. Polson to negotiate with us and, as I recall, I think he informed us that we were under some kind of a contract with the C. I. O.; and he also told us that he thought we would be better off if we stayed in one union. This has been quite awhile ago. And he reminded us that another fellow, Mr. Brant and myself, had been on the shop committee of the C. I. O.,—which we had,—and he said, “If I remember right, I think you are on that committee.” We had. And then he said he didn’t see any [219] reason why we should leave the C. I. O.; and as we were leaving, he advised us to think the matter over.

Q. What do you mean? He told you to think the matter over? A. Yes.

Q. (By Mr. Walker): As you were leaving, did Mr. Polson say anything to you?



(Testimony of Sam Key.)

A. If I remember correctly, those were the exact words, "You boys think it over." I believe those were his exact words.

Q. During all of the time you worked for the Polson Logging Company, has Mr. A. M. Polson, Mr. F. A. Polson, or Bennett Ellingson told you about any rules or regulations concerning safe operations of trains?

A. He has told us where and when he wanted his signals, and the speed of the trains on the hills, and speed through camp and over crossings.

Q. What signals do you mean?

A. What do you mean? Whistle signals?

Q. Did he give you any specific instructions?

Mr. Maxwell: Who?

Q. (By Mr. Walker): Who gave you these instructions? A. Mr. Ellingson. [220]

Q. Did Mr. Ellingson tell you anything about crossings other than what speed he wanted you to cross at? Other than what speed he wanted the train to move at while crossing the crossings?

A. Except that he wanted lots of whistles at crossings.

Q. Were there any safe operation rules and regulations of any kind told to you by Mr. Ellingson, or by any of those present, other than the ones you have mentioned? A. I don't recall.

Mr. Walker: That is all.

(Testimony of Sam Key.)

Cross Examination

By Mr. Maxwell:

Q. Were you informed of these safety rules prior to May, 1940?

A. For the whistles, I think he told me when I started to run, or shortly afterwards.

Q. What about the speed over crossings?

A. Well, I don't remember just when he told me that.

Q. Do you recall whether or not it was before May, 1940?

A. No, I do not; but the speed has always been about the same; we have observed that rule.

Q. You have observed that rule?

A. Yes, in moving over crossings.

Q. You are the engineer? A. Yes.

Q. You have crossed Crossing No. 1 as the head brakeman or the [221] second brakeman?

A. I am not a trainman.

Q. That is right. You are the engineer?

A. Yes.

Q. When you have crossed crossing No. 1, has the head brakeman or the second brakeman ridden on the crummy?

A. Yes, they are usually on the crummy, or on the outside or inside, by the little window.

Q. In approaching the crossings, are they in sight of the engineer?

A. Mostly. Sometimes they are and sometimes they are not. I can't always tell, and I couldn't

(Testimony of Sam Key.)

tell their position without leaning out of the window, and then you would be too far away from the controls. [222]

Q. (By Mr. Maxwell): Have the head brakemen on the trains on which you have acted as engineer flagged Crossing No. 1?

A. No. As a rule they stand out there; some do, when you are over the crossing, and they give you a high ball.

Q. Stand where?

A. Usually on the crummy, or sticking their heads out of the door, inside.

Q. In sight of the engineer?

A. No, not always.

Q. And they give a signal for the engineer?

A. Some do, and some don't; it is up to the brakemen.

Mr. Maxwell: That is all.

### Redirect Examination

By Mr. Walker:

Q. Do you recall whether or not this matter about the slow speed over crossings occurred before or after Mr. Reece and Mr. Lytle were discharged?

A. There was instructions after; I don't remember whether there was any prior instructions to that, but instructions were given afterwards.

Q. When you say some brakemen stick their heads out of the window, what do you mean?

A. Well, the crummies are not all alike.

(Testimony of Sam Key.)

Q. They are, inside? [223]

A. Most of the crummies now. On most of the crummies now you can stay inside and see out. They have big windows and side doors. [224]

Mr. Walker: Mr. Harlan.

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### JOHN HARLAN

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Walker:

Q. Your name is John Harlan? A. Yes.

Q. Where do you live? A. In Hoquiam.

Q. Where are you employed?

A. At the Polson Logging Co.

Q. And in what capacity?

A. Locomotive fireman at the present time.

Q. How long have you been employed at the Polson Logging Co., on their railway system?

A. Well, this last time,—it was four years the 4th of last March,—I have worked off and on a number of years.

Q. Do you know Bennett Ellingson?

A. Yes.

Q. Were you working at the Polson operations in April 1940? A. Yes.

Q. In April 1940, where were you running?

(Testimony of John Harlan.)

A. I think it was on the lower end dumping logs, and possibly making a trip west at the same time. It is hard to say. The engine I am on is shifted around quite a bit.

Q. What camp were you operating out of? [225]

A. Railroad Camp.

Q. Are you a member of any labor organization?

A. Yes.

Q. What organization?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Q. On or about April 1940 did you have a talk with Mr. Ellingson about the Brotherhood?

Mr. Maxwell: I didn't hear the answer.

Mr. Walker: He did not answer yet.

The Witness: There was nothing said about the Brotherhood.

Q. (By Mr. Walker, continuing): What was it that was said?

A. Mr. Ellingson stopped me as I was going in, and he said that he thought that C. B. Groves was leading us astray.

Q. (By Mr. Walker, continuing): Did you know Mr. Groves in April 1940?

A. Yes.

Q. Was he employed out there? [226]

A. Yes, he was employed there.

Q. Where was he employed?

A. As a brakeman for the Polson Logging Co., or Ozette.

Q. Mr. Harlan, about when did you become a member of the Brotherhood?



(Testimony of John Harlan.)

The Witness: I am not sure.

Q. (By Mr. Walker, continuing): Approximately?

A. Oh, I put in an application some time in March.

Q. What year? A. 1940, I believe.

Q. And before you became a member, did anybody talk to you about the Brotherhood?

The Witness: Yes, I was talking to,—I talked to Mr. Lytle.

Q. (By Mr. Walker, continuing): Anybody else? A. I don't recall anybody else.

Q. And before you sent an application in to the Brotherhood, were you a member of any labor organization? A. The Timber Workers.

Q. The I. W. A.?

A. The I. W. A. I think it was. [227]

Q. Now, did you have a talk with Mr. Ellingson again after that conversation which you have just now related?

A. I don't think we ever talked to Mr. Ellingson.

Mr. Maxwell: I didn't hear the answer.

The Witness: I say, I don't think I ever talked to Mr. Ellingson; I know, not about the Brotherhood. Mr. Ellingson made a statement one time that the Northern Pacific was going to take it over. It was a statement made on the engine.

Q. (By Mr. Walker, continuing): About when did you have this talk about the Northern Pacific,

(Testimony of John Harlan.)

with respect to the time when he talked to you about Mr. Groves?

A. It was possibly in April, I expect. I don't know when it was; shortly after that; a few days after that; a few days one way or the other; I wouldn't say for sure.

Q. Now, has Mr. F. A. Polson or Mr. A. M. Polson or Mr. Ellingson told you about any safety rules or regulations concerning the safe operations of the railroad?

A. No, I have not received any. For the short time I have [228] been up here, they told me about the whistles, and gave me the speed through camps and crossings. I ran up there about a week or two one time.

Q. Have you ever received or been told of any rules or regulations concerning the safe operations of trains by any of those three?

A. No, I have not.

Q. Other than the ones that you have just mentioned?           A. No.

(Witness excused.)

Mr. Maxwell: While counsel is considering what to do, I move that the testimony of Mr. Harlan with respect to the effect that C. B. Groves was leading the boys astray, be stricken; I further move that the answer in which Mr. Harlan said that Mr. Ellingson stated that the N. P. was going to take over the Polson line, be stricken.

Mr. Walker: May I be heard on that, Mr. Examiner?

Trial Examiner Kent: Yes.

Mr. Maxwell: For the reason that it is irrelevant, incompetent and immaterial.

Trial Examiner Kent: Your objection is noted.  
[229]

Trial Examiner Kent: Is Mr. Groves an officer of the union?

Mr. Stevens: I didn't hear the question.

Mr. Walker: Is Mr. Groves an officer of the Brotherhood? [230]

Mr. Stevens: No.

Mr. Maxwell: Mr. Examiner, the record will speak for itself, of course. Counsel misquoted the testimony of Mr. Wood regarding the alleged conversation. Counsel stated that Mr. Ellingson said the company was not going to stand for two unions. There is no such testimony at all; there isn't even an inference.

Trial Examiner Kent: I will reserve my ruling on motion to strike Mr. Groves' testimony concerning the alleged Lehman remarks, pending consideration of the entire record. In view of counsel's statement, I will reserve ruling on this motion and consider the testimony in the transcript. Some of it, I am a little hazy about. I prefer to consider the record as a whole. So I will reserve ruling on this motion, also.

NELS HILL [231]

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Where are you employed?

A. At the Polson Logging Co. at Railroad Camp.

Mr. Stevens: I can't hear you.

Q. (By Mr. Walker, continuing) In what capacity are you employed there?

A. Well, I have been working at braking,—running on the train,—

Q. How long have you worked on the Polson railway system?

A. I don't hardly remember it; quite a while.

Q. Since 1912? A. Well,—

Q. Since 1912?

A. No; I have not worked on the road since 1912. I was there in 1912. About 1915.

Q. In 1915 you started working on the railroad?

A. I think it was 1915.

Q. 1915? A. Along in there. [232]

Q. Did you work for the Polson Company, on the railway, in April and May of 1940?

A. Yes.

Q. And about that time, April or May, what were you doing? Do you recall?

A. I was braking.

Q. In April or May of 1940, did you know Bennett Ellingson? A. Yes.

(Testimony of Nels Hill.)

Q. At that time did you also know a Mr. Landi?

A. Yes.

Q. And what was Mr. Landi's job?

A. Section-man.

Q. Are you a member of the Brotherhood?

A. Yes. [233]

Q. (By Mr. Walker): Mr. Hill, were you present during a conversation between Mr. Ellingson and Mr. Landi in either April or May of 1940?

A. I think I heard them talking; Yes, I heard them talking.

Q. And where was that? A. On a flat-car.

Q. Who all were on this flat-car?

A. Well, there was three of them. Landi and Bennett and I was on there,—that is three. There were a couple more, but I can't remember who.

Q. And what was said at that time?

A. Well, they had a couple of wrecks down there.

Trial Examiner Kent: Talk a little louder, please.

The Witness: And he was talking about,—he thought they were bucking down there, that there were two unions in there, and they were bucking,—something like that, he mentioned. Then he said, "One of them fellows is down here now." He didn't say who it was, but I heard him.

Q. (By Mr. Walker): What had occurred just before this conversation arose?

A. They had a wreck up at Old Camp No. 6.



(Testimony of Nels Hill.)

Q. By Old No. 6?

A. Yes. And they were fixing the crackup; and they had [234] another wreck further down, too, and the section crew was working on it.

Q. There were two wrecks that day?

A. There were two wrecks. I was working on No. 18.

Q. And you were working on No. 18?

A. Yes.

Q. (By Mr. Walker): Well, let me ask you this; do you know C. B. Groves? A. Yes.

Q. And where was Mr. Groves at the time this conversation took place?

A. He was down in there below No. 6.

Q. (By Mr. Walker): Did you do logging before you went railroading? A. Yes.

Q. Do you know what the term "bucking" means? What does it mean?

A. It means bucking logs after they have been fallen; after [235] the fallers have fallen the tree, or cut the tree down, they have buckers.

Q. Were there any fallers or buckers around there, or around that wreck?

A. I didn't see any; there might have been.

Q. Did Mr. Ellingson say who was doing the bucking?

A. No, he didn't mention his name.

Q. Were there any buckers bucking logs at the wreck? A. No.

Q. (By Mr. Walker): How did the conversation come up?

(Testimony of Nels Hill.)

A. Well, it came up when they got in the car, and he was talking to Landi. [236]

Q. (By Mr. Walker): Was there a conversation between Mr. Ellingson and Mr. Landi?

A. Yes.

Q. Did Mr. Ellingson take part in it?

A. He was the one talking to Landi.

Q. And what did Mr. Ellingson say?

A. He said, "It looks like they are bucking." That is what he said. And then he said, "Some day somebody,—some day they will all be going down the road." That is what he said.

Trial Examiner Kent: If you can't remember all what Mr. Ellingson said, and what Mr. Landi said, just tell us what was said. Assuming, of course, Mr. Landi said anything.

The Witness: Mr. Landi didn't say anything.

Trial Examiner Kent: Talk louder.

The Witness: He was just listening. They was talking.

Q. (By Mr. Walker): When you use the word "they", who do you mean by "they"?

A. They were talking.

Q. Who was that?

A. Mr. Ellingson was talking to Mr. Landi.

[237]

Q. (By Mr. Walker): Are you repeating what Mr. Ellingson said, word for word, or are you giving the substance of it?

A. It is just the words that he said.

(Testimony of Nels Hill.)

Q. What?

A. It is just the words that he said.

Q. Did Mr. Ellingson say anything more after he said, "they are bucking"?

A. No; he didn't say anything more after that.

Q. What was Mr. Ellingson doing after they were talking?

A. Well, they were going back to the other wreck there.

Q. How was he acting?

A. He was acting all right.

Q. Does Mr. Ellingson swear?

A. I haven't heard him swear very often.

Q. Did he on that day?

A. No; I didn't hear it. [238]

Q. (By Mr. Walker): Did Mr. Ellingson say anything about Unions during that conversation?

A. No, he didn't mention Unions.

Q. (By Mr. Walker): Have you related all you can recall that was said during the course of that conversation?      A. Yes, I think so. [239]

Q. (By Mr. Walker): Did Mr. Ellingson say anything about one of the train men leading the men into the Brotherhood?

The Witness: He said there was one down there.

Trial Examiner Kent: That is all he said, that there was one down there? Is that all he said?

The Witness: Yes, that is all he said, "one of them down there."

Trial Examiner Kent: Just tell what you re-

(Testimony of Nels Hill.)

member hearing Mr. Ellingson say; give us all the words that he said.

The Witness: Well, he said when he got on,—when he got on, he started talking to Mr. Landi, and he said that it [240] looked like they are bucking. He says, “In this here Union,” he says,—and he says there is one of them down,—he says, “there is one of them down there now.” And then he said “It looks like he is leading the men astray.”

Trial Examiner Kent: Leading the men what?

The Witness: Astray. He said, “one of them is down here now.”

Trial Examiner Kent: Will you read that answer, Mr. Reporter?

(Thereupon the answer of the witness was read aloud by the reporter of the above recorded.)

The Witness: And then he said, “some of these days, I will let them all go.” That is just the words he said.

Q. (By Mr. Walker): Mr. Hill, what engine men and trainmen were down there?

A. I can't remember who it was.

Q. Who was on the train?

A. Bert Fenton was running the train.

Q. Mr. Fenton was the engineer. A. Yes.

Q. Who was his fireman?

A. I can't remember who it was.

Q. You were one of the brakemen?

A. Yes.

(Testimony of Nels Hill.)

Q. Who was the other one? [241]

A. I was alone.

Q. Who were the trainmen on the other train?

A. McCabe was, but I don't know who was firing for him.

Q. Who were the brakemen?

A. Joe,—I don't know what his last name is. I know his first name is Joe. I don't know exactly what his last name is,—Joe Martinez, I guess it is.

Q. He was the other brakeman?

A. I don't know.

Q. Do you know what the other train was?

A. No. 90.

Q. Do you know whether Mr. Groves worked on No. 90 that day?      A. No.

Q. Do you know whether he did or did not?

A. He was working on No. 45 that day.

Q. Where was that?      A. Out of No. 6.

Q. Near the wreck?

A. No; on the other side of it. [242]

Q. (By Mr. Walker): In which direction had Mr. Ellingson come when he came to the wreck?

A. Well, he came from out the line somewhere around the Railroad Camp; he was at the first wreck when I went down with the section crew.

Q. Were you between Camp 6 and Railroad Camp?      A. Yes.

Q. And was No. 45 between Railroad Camp and Camp 6?      A. It was on the other side of 6.

Q. (Mr. Walker): During the day,—during the



(Testimony of Nels Hill.)

time you have worked on the Polson Railway System, have either Mr. A. M. Polson, Mr. F. A. Polson, or Mr. Ellingson told you anything about any rules concerning the safe operation of the train?

A. Well, Bennett has spoke about it, yes; there were those new rules.

Q. Did you know of the discharge of Mr. Lytle or Mr. Reece? A. Yes.

Q. Was it before or after that?

A. It was after that, when he spoke to me. [243]

Q. (By Mr. Walker): Before Mr. Lytle and Mr. Reece were discharged, had Mr. A. M. Polson, or Mr. F. A. Polson, or Mr. Bennett Ellingson told you of any rules and regulations concerning the safe operation of trains? A. No.

#### Cross-Examination

By Mr. Maxwell:

Q. Were you ever told of any safety regulations regarding the operation of the train by Mr. Ellingson? A. Prior to May? [244]

Q. 1940. A. No, I have not.

Q. You have worked as a second brakeman, have you not? A. Yes.

Q. Were you told of any regulations regarding the safety of trains by the head brakeman?

Trial Examiner Kent: Who is that? Mr. Groves?

Mr. Maxwell: No, his head brakeman.

A. No.

Q. (By Mr. Maxwell): Were you ever told of any safety regulations by Mr. Groseclose? [245]

(Testimony of Nels Hill.)

A. Well, when he gave me that book here the other day,——

Q. (By Mr. Maxwell): Prior to May, 1940, you had never been instructed by him regarding any safety rules?      A. No.

Q. I beg your pardon?      A. No.

Q. You were on a train, were you not?

A. Yes.

Q. In November of 1937, when J. Morley Stearns was involved in an accident?

A. Yes, I see that.

Q. (By Mr. Maxwell): At that time, following the wreck there was an investigation, was there not?

A. I don't know anything about that.

Q. Didn't you give some statement about that wreck?

A. That we were in the clear, you mean?

Q. Yes.      A. Yes, we was. [246]

Trial Examiner Kent: What was the time?

Mr. Maxwell: November 15, 1937.

(Whereupon the document referred to was marked for identification as Respondent's Exhibit 2.)

Q. (By Mr. Maxwell): Showing you what has been marked as Respondent's Exhibit 2 for identification, I will ask if that is your signature (handing document to the witness)?      A. Yes.

Q. Calling your attention to Respondent's Exhibit 2, again, I will ask you if you can identify what that is?

(Testimony of Nels Hill.)

Mr. Walker: May I ask that the witness be instructed to answer the question yes or no, and not volunteer any material facts?

Trial Examiner Kent: What is the pending question?

Mr. Maxwell: I asked him if he could identify it?

Trial Examiner Kent: Very well. You can answer that yes or no.

A. I can identify it, yes.

Q. (By Mr. Maxwell): You can? A. Yes.

Q. What is it?

Mr. Walker: To that I object as incompetent, irrelevant and immaterial.

Mr. Maxwell: I have not offered it yet. [247]

Mr. Walker: I am objecting to the question.

Trial Examiner Kent: The objection is sustained. You are using it to refresh his recollection. I don't know that any question has been asked concerning the contents; it may not be necessary.

Q. (By Mr. Maxwell): Calling your attention to what has been marked for identification as Respondent's Exhibit 2, as this statement says, that this train was stopped about seventy feet from the crossing, as a supply car was ahead of the engine, and it was necessary to flag the crossing. Do you find that statement there?

Mr. Walker: I will object to that as incompetent, irrelevant and immaterial.

Trial Examiner Kent: The objection is sus-

(Testimony of Nels Hill.)

tained. I think you can question him in reference to that matter involved there, and then in case he denies it, I think you can refresh his recollection. I don't think there is any necessity to do that yet.

Q. (By Mr. Maxwell): The train was stopped on that occasion about seventy feet from the crossing because there was a supply car ahead of the engine; is that correct?

Mr. Walker: I will object to his reading that.

Trial Examiner Kent: The objection is sustained. You can proceed with your inquiry, but I don't think you need to refresh his recollection; it has not been shown that it is necessary. [248]

Mr. Maxwell: This witness has testified, Mr. Examiner, that he has never had any instruction; that there has never been any rule wherein he has been informed regarding the stoppage of trains or regarding safety operations, or safe operation of the trains. Now, we have a signed statement, in affidavit form, by this witness in which he says, "This train was stopped about seventy feet from the crossing, as a supply car was ahead of the train, and it was necessary to flag the crossing."

I certainly have the right to introduce this to show that there was such a rule, and that he must have been informed of it because it is there in his affidavit.

Mr. Walker: Counsel is reading into this record something that does not appear.

There is no statement enclosed in that document

(Testimony of Nels Hill.)

from which he is reading which indicates there was a rule regarding flagging of crossings. He may have done it, according to his judgment. There is no showing in the document itself about any rule or regulation imposing that duty upon these trainmen.

Mr. Maxwell (Reading): "As it was necessary."

Trial Examiner Kent: I think you are at liberty to inquire as to the rule and so forth; and then, if that is material, you may offer it to refresh his recollection.

Mr. Maxwell: Well, he is not my witness, Mr. Examiner.

Trial Examiner Kent: Well, I think you still have the right to attack his credibility. [249]

Q. (By Mr. Maxwell): Was the crossing flagged on the occasion of November 15, 1937, at this crossing accident? A. No.

Q. It was not?

A. No. We did not flag the crossing. We flagged the engineer to stop.

Q. Why did you flag him to stop?

A. Well, we seen the truck coming.

Q. Handing you Respondent's Exhibit 2 for identification, I will you if this statement: "The train was stopped about seventy feet from the crossing, as a supply car was ahead of the engine, and it was necessary to flag the crossing" does not appear; is that not correct?

Mr. Walker: He means, does that statement appear in there? Is it correct that it appears in there?



(Testimony of Nels Hill.)

The Witness: Yes.

Trial Examiner Kent: Does that statement appear in the paper?

Mr. Walker: I will object to that on the ground that it is not the best evidence.

Trial Examiner Kent: The answer may be taken. Does the paper show that?

The Witness: Yes; the paper shows that, yes.

Q. (By Mr. Maxwell): Does that refresh your recollection that the flagging of the crossing was required? [250]

A. No; they never did flag the crossing; only, you had to watch out.

Q. You had to watch out? A. Yes.

Q. What do you mean?

A. To see whether it was clear when you went over.

Q. If there was something coming.

A. Well, if that were true, if they were going over, it was their hard luck; if they were ahead of us, and we could see it, we would flag on the car.

Q. You got out on the head end of the crummy?

A. Yes.

Q. Under whose instructions did you do that?

Mr. Walker: The same objection. It is assuming there was any instructions.

Q. (By Mr. Maxwell): Well, were you given any instructions to do that?

A. No.

Q. Will you explain your statement, or this part of it, "It was necessary to flag the crossing"?

(Testimony of Nels Hill.)

A. Well, it is a case like that.

Q. Were you the head brakeman on that occasion?  
A. No, I was second.

Q. Where was Mr. Williams riding?

A. He was standing right alongside of me.

[251]

Q. Where were you? A. On the flat car.

Q. Ahead of the crummy? A. Yes.

Q. Why were you standing there?

A. We always stood out there; we always were out there at the crossing.

Q. You were always out there at the crossing?

A. Yes.

Q. Is that the reason you were out there on this occasion?

A. That is the reason we were out there.

Q. Had Mr. Williams ever told you to go out there to flag?  
A. No.

Q. Do you mean to say that you flagged these crossings without ever having been instructed to do so?

A. Yes. I never was instructed to do so.

Mr. Maxwell: The respondent offers at this time what has been marked as Respondent's Exhibit 2 for identification, for impeaching purposes, and to show prior inconsistent statements.

Mr. Walker: To which I object on the ground that it is incompetent, irrelevant, and immaterial.

Trial Examiner Kent: The objection is sus-

(Testimony of Nels Hill.)

tained. It may be offered and sent in as a part of the files, as a rejected exhibit. [252]

RESPONDENTS' EXHIBIT No. 2

(Rejected as Evidence.)

State of Washington,

County of Grays Harbor—ss.

Re: J. Morley Stearns, Deceased.

We, the undersigned, having been duly sworn on oath, depose and say: That we are employed on train crew as brakeman for Polson Logging Co., Hoquiam, Washington, working on locomotive #70. That on November 15, 1937, at about 12:30 P. M. while enroute to Lake Quinault from Polson Railroad Camp, travelling north, approached Crossing #5, three miles south of Neilton, Washington, on Olympic Highway. That this train was stopped about 70 feet from crossing, as a supply car was ahead of engine and it was necessary to flag this crossing. That upon nearing crossing, preparatory to flagging crossing, they observed a log-truck approaching crossing, at an estimated speed of 40 miles per hour, travelling southwards towards Hoquiam, Washington. States that they observed truck swerving when about five hundred feet from crossing, evidently when truck-driver attempted to apply brakes. That train came to a complete stop about 70 feet from crossing as crew was unable to determine whether or not this truck was going to stop. That truck driver evidently lost control of

(Testimony of Nels Hill.)

truck which ran off of road on wrong side, crashing into a tree about 50 or 60 feet from crossing. That the rest of train crew was then notified of accident and railroad camp was called for assistance. That upon examination of driver and truck, the driver appeared dead and the truck was badly wrecked, engine and cab being demolished, with driver on truck seat, badly cut about head. That a car approached and a lady who appeared to be a nurse, examined the deceased and advised that she believed him still living, therefore the deceased was placed in an automobile and started towards Hoquiam, Washington. That the identity of the deceased was not known to any of train crew at time of accident. That the logging train of Polson Logging Co. had not crossed this railroad crossing at time of accident, both brakemen being on flat-car, having clear visibility of road on both sides of crossing. That the above facts are true and correct to the best of my knowledge:

(Signed) W. J. WILLIAMS,

Hoquiam, Rte. No. 1.

(Signed) NELS HILL

Witness:

TOM WALKER

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Redirect Examination

Q. (By Mr. Walker): Was Stearns killed at the Axford Prairie Crossing? A. No.

(Testimony of Nels Hill.)

Q. Did you continue to work for the Polson Logging Company after Stearns was killed at that crossing? A. Yes.

Mr. Walker: That is all.

Recross-Examination

Q. (By Mr. Maxwell): The train did not strike Mr. Stearns' automobile? A. No.

Q. Stearns' automobile did not strike the train, did it? A. No, it did not.

Mr. Maxwell: That is all.

Redirect Examination

Q. (By Mr. Walker): Did you continue to work for the Polson Logging Company after Stearns was killed at this crossing, whatever crossing it was? A. Yes, I did. [253]

Mr. Walker: Mr. Brant.

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LAWRENCE BRANT,

was called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Are you employed by the Polson Logging Company? A. I am.

Q. How long have you been employed by them?

A. Well, in train service about twelve years.



(Testimony of Lawrence Brant.)

Q. What job have you held in train service?

A. As a fireman and engineer.

Q. Have you been an engineer in train service for some time?      A. Yes.

Q. For how long?

A. Approximately two years.

Q. During the time you have been in the Polson train service, has either Mr. A. M. Polson, F. A. Polson or Mr. Bennett Ellingson ever told you about any rules or regulations governing safe operation of trains?      A. No. [254]

Q. (By Mr. Walker): Has Mr. Groschlose ever told you?      A. No, sir. [255]

Q. (By Mr. Walker): During all of the time that you have worked as an engineer, when you are sitting in a cab, approaching a crossing, particularly Axford Prairie Crossing, what do you do?

Mr. Maxwell: I will object to that as incompetent, irrelevant, and immaterial. [258]

A. We usually reduce our speed, as a general practice.

Q. (By Mr. Walker): Do you do anything else besides reducing speed?

A. Yes; we are watching the road.

Mr. Maxwell: Mr. Examiner, may it be understood that my objection goes to the entire line?

Mr. Maxwell: At this time I move that the testimony of the witness Lawrence Brant be stricken in its entirety as being irrelevant to any issue herein involved.

(Testimony of Lawrence Brant.)

Trial Examiner Kent: The motion will be denied.

Q. (By Mr. Walker): Handing you what has been marked as Board's Exhibit 4, have you ever seen that before? [259]

A. Yes, I have.

Q. Are you a member of any labor organization? A. Yes.

Q. What organization?

A. Brotherhood of Locomotive Firemen & Enginemen.

Q. Have you ever held any official position with that organization? A. No, sir.

Q. Have you ever had occasion to meet with any of the representatives of the company concerning the Brotherhood of Locomotive Firemen & Enginemen? A. Yes. [260]

#### Redirect Examination

Q. (By Mr. Stevens): I will restate the question. At the time this letter and contract proposal was prepared, you, as a member of the general committee had some voice in preparing it; is that correct? A. Yes.

Q. Is it or is it not a fact that Mr. Lytle, Mr. Reece, Mr. Williams, Mr. Key, and yourself were the members of the committees that called on Mr. Polson that day? [264]

A. Yes, it might be; I wasn't sure of all the names.

(Testimony of Lawrence Brant.)

Q. (By Mr. Stevens): Were you a member of any labor organi- [265] zation before you joined the Brotherhood of Locomotive Firemen & Engineers? A. Yes.

Q. Was that mentioned at this meeting with Mr. Polson? A. Yes.

Q. State as near as you can recall what was said and by whom?

A. Mr. Polson asked me if I had not served on committees of the C. I. O., and I stated, "Yes." He asked me what my reason was for leaving the organization; I told him that I like others, were not in line with the policy of the leaders of the C. I. O., or the policies that the leaders of the C. I. O. were putting out, and therefore we thought it to our benefit to drop out of the organization.

Q. And did Mr. Polson make any comment or statement?

A. In answer to my statement?

Q. Yes. A. No, he did not.

Q. What happened from then on? Was anything more said prior to the time the meeting broke up and you left the room?

A. Not that I recall.

Q. Did you about the time you were leaving hear Mr. Lytle make any statement to Mr. Polson?

A. Yes.

Q. Describe that, as near as you can recall.

(Testimony of Lawrence Brant.)

A. He asked Mr. Polson if he would look at this agreement and consider it.

Q. And what did Mr. Polson say?

A. He said "Yes," that he would.

Q. Did he say anything else?

A. Nothing that I can recall.

Q. Was that at the time you were leaving the room?           A. Yes.

Q. And did you leave the room before Mr. Lytle did?           A. I don't recall as to that.

Q. In this conversation with Mr. Polson, was anything said about a jurisdictional dispute between other organizations?

A. Yes, I believe there was.

Q. (By Mr. Stevens): And what did he say?

A. Well, as I recall, he said he would not like to see two [267] unions in his camp because there would be involved jurisdictional disputes. He cited an instance in Bremerton, I believe it was, where the caulkers would not work because there were other unions involved in that place. That is, there were different unions working in that place. [268]

Mr. Maxwell: At this time, the respondent offers what has been marked as Respondent's Exhibit 2 for identification. Yesterday, I believe, your ruling was that it would be rejected. I now offer Respondent's Exhibit 2 for identification for the rejected file.

Trial Examiner Kent: It may be so received.

Mr. Walker: Mr. Reece.

## CLAYTON REECE

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Walker:

Q. What is your occupation?

A. Brakeman.

Q. Have you been employed by the Polson Logging Co.?

A. Yes, sir.

Q. When did your employment first begin there?

A. July, 1928.

Q. 1940, wasn't it?

A. 1928. [272]

Q. You began there in July 1928?

A. Yes.

Q. What was your work at that time?

A. Brakeman.

Q. You have worked continuously since 1928 until May 21, 1940, for the Polson Logging Co.?

A. No.

Q. Following your employment in 1928, when did it cease?

A. In July of 1930.

Q. What occurred at that time?

A. I had an accident and got hurt.

Q. Did you resume employment with the Polson Logging Co. later, or come back there?

A. Yes.

Q. When?

A. I came back in the fall of 1933.

Q. At what job?

A. Brakeman.

Q. Then how long did you continue working after you returned in 1933?



(Testimony of Clayton Reece.)

A. I don't remember exactly, but approximately two months.

Q. Then what occurred?           A. I quit.

Q. Following that incident, did you work for Polson again?           A. Yes. [273]

Q. When next did you begin work there?

A. In May of 1939.

Q. Did you work continuously then, when work was available, until May 1940?           A. Yes.

Q. As a brakeman?           A. Yes.

Q. From May 1939 until May 1940, did you work with anyone at Polson?           A. Yes.

Q. Who?           A. Different ones.

Q. In what capacity did you work there during that period?

A. Well, I went there as a head brakeman, first, on a one-man job,—construction job, and later I went on a log haul up until about the 4th of July, I believe.

Q. (By Mr. Walker, continuing): 1939?

A. Yes.

Q. And from July 4, 1939, until May 21, 1940, what did you work at? [274]

A. As a second brakeman.

Q. And who was your head brakeman during that period, or was it one man all the time?

A. No.

Q. (By Mr. Walker, continuing): Mr. Reece, are you a member of any labor organization?

A. Yes.

Q. What organization?

(Testimony of Clayton Reece.)

A. Brotherhood of Railroad Trainmen.

Q. How long have you been a member of that organization?

A. I first joined them in 1910.

Q. What year?           A. 1910.

Mr. Walker: Was your membership terminated at some time?

The Witness: It was terminated in 1915. [275]

Q. (By Mr. Walker, continuing): And in May, 1940, were you a member of any labor organization?

A. Yes.

Q. What?

A. Brotherhood of Railroad Trainmen.

Q. In May 1940 did you hold any official position with the brotherhood?           A. Yes.

Q. What?

A. I was secretary of the General Committee.

Q. And when did you receive that position?

A. I believe it was some time in March.

Q. 1940?           A. 1940.

Q. Now, in your official capacity, did you have occasion at any time to meet with any of the representatives of the Polson Logging Co.?

A. Yes.

Q. And when was that?

A. It was May 18, 1940.

Q. Was anyone with you?           A. Yes.

Q. Who?

A. The members of the committee.

Q. And who did you meet with? [276]

(Testimony of Clayton Reece.)

A. I met with Mr. Arnold Polson, Mr. Bennett Ellingson and Mr. Alex Polson.

Q. Where did you meet?

A. In the Polson office building.

Q. About what time of day did that meeting take place?      A. About 11 o'clock.

Q. In the forenoon?

A. In the forenoon.

Q. About how long did it last?

A. Approximately half an hour.

Q. I hand you what is marked Board's Exhibit 4 and ask you if you have ever seen that document before?

(Hands document to witness.)

A. Yes.

Q. And where did you last see that?

A. When we presented it to Mr. Polson.

Q. When was it presented to Mr. Polson?

A. May 18, 1940.

Q. When it was presented to Mr. Polson, did he do anything with it?      A. He read it.

Q. Did he say anything?      A. Yes.

Q. What did he say?

A. Do you want me to explain everything that he said? [277]

Q. Yes.

A. He asked us why we were pulling out of the I. W. A., and we told him that we was not satisfied with the representation that we were getting; and we told him that the Railroad Train-

(Testimony of Clayton Reece.)

men could do us more good, and he said he didn't see why one union in the camp couldn't do us more good than two unions, and he thought we were making a mistake by getting out; and he also advised us that he was not running a railroad, that he was running a logging camp, and that on account of their being two unions he was afraid there might be trouble amongst the men, that they might have a jurisdictional dispute or something, that he didn't want that. We told him that we didn't want it, and that he needn't to be afraid of the Brotherhood, that we would not cause no trouble. I believe that was all. But, on going out, we asked him if he would read it over and give us an answer on it, and think it over, and he said he would; and then he said for us to think over what he had told us.

Q. Now, did that end the meeting?

A. I believe that was all.

Q. Following the meeting of May 18, when next did you work?           A. May 20.

Q. Did you work all that day of May 20?

A. Yes.

Q. At the conclusion of that day's work, what did you do? [278]

A. We came in and tied up.

Q. As usual?           A. Yes.

Q. After tying up, what did you do?

A. We went to the office and looked at the board to see whether or not,—to see what the line-up was.

(Testimony of Clayton Reece.)

Q. And was there anything posted on the board that night?      A. Yes.

Q. What was posted there?

A. Call time for the next morning.

Q. And what was the call time?

A. Five o'clock, I believe, a.m.

Q. Did you report the next morning?

A. Yes.

Q. And what did you do that morning?

A. We went down into the yards and took up our train.

Q. What was your train? Of what did it consist that morning?

A. It consisted of trucks.

Q. What kind of trucks?

A. Disconnected trucks, I would call them,—I don't know.

Q. After picking up your train, what did you do?      A. We headed west.

Q. And did you work all that day?

A. Yes.

Q. And at the end of that day what did you do? [279]      A. We came in as usual.

Q. And what was that?

A. We came in on that day,—on that day we had our crummy car behind the trains, and I cut it off at the office.

Q. What do you mean by "cut it off at the office"?

A. We were pulling the train,——



(Testimony of Clayton Reece.)

Q. Just tell us what you can by "cut it off at the office.?" A. I pulled the pin on it.

Q. Does that detach the crummy from the rest of the train? A. Yes.

Q. After pulling the pin on the crummy, what did you do?

A. I stopped it with the hand brake.

Q. Where was this?

A. In front of the office, to clear the oil spur; that is the last thing we did, to take oil; and the head brakeman would take the train into the yard, with the logs and come back with the engine.

Q. How is that?

A. Put the logs on the siding and come back with the engine.

Q. After that what did you do?

A. I went over to the office and looked at the board while he was coming back?

Q. While who was coming back?

A. Well, the brakeman was bringing the engine back.

Q. Was there anything on the board? [280]

A. Yes.

Q. What?

A. There was a cross mark on my name and Mr. Lytle's. [281]

Q. (By Mr. Walker): Did you see Mr. Gros-  
close that night? A. Yes.

Q. Now, when you saw the "X" after your name, what happened?

A. He told me that Mr. Bennett was up in the

(Testimony of Clayton Reece.)

air about something, and that we were off the board,—that we were marked off the board.

Q. Who was the “he” that said that?

A. Grosclose. [282]

Q. (By Mr. Walker): After Mr. Grosclose said that Bennett was up in the air about flagging the crossing, did you say anything?

A. No, I did not.

Q. Did you say anything about whether or not you had ever heard anything about flagging the crossing?

A. I told him I had never heard anything about flagging the crossing.

Q. After you said that, did Mr. Grosclose say anything?

A. He said that,—well, he said that he didn’t know anything about it, only he said, “Bennett was back here this morning before I had my shoes tied up, and walked up to the board and made two cross marks on it, over your name and Lytle’s.”

Q. Did he say anything more at that time?

A. Not at that time. [283]

Q. Did you say anything more? A. No.

Q. After that did you see or come in touch with Mr. Ellingson? A. No, I did not.

Q. Did you ever get in touch with Mr. Grosclose again? A. Yes.

Q. When?

A. I called him the next day, which was our regular day off. He told us when we left there that day,—he said, when we left there, “Tomorrow is

(Testimony of Clayton Reece.)

your day off, and you had better call me, anyway.”

So I called at the end of the next day.

Q. That would be which day?

A. That would be the 22d.

Q. All right.

A. And he said, “No, there is nothing doing.” And I called him again at the end of the third day,—that would be the 23d, and he said, “There is nothing doing, and won’t be the rest of this week.” So I told him I was going to Seattle, that I would call him,—that I would call him Sunday night and he said, “O. K.” And I went to Seattle, and on Sunday evening I called him again.

Mr. Maxwell: What day was this, if you have a calendar there?

The Witness: That would be the 26th,—May 26.

Q. (By Mr. Walker): And did you have a talk with him that day? [284]

A. No. He said there was nothing doing. I then told him that he knew my telephone number, and that they were in the habit of calling me as much as I called them, and that if he needed me to call me.

Q. (By Mr. Walker): What happened then?

A. I called at the Polson Logging Company office for Mr. Bennett.

Q. When was that?

A. That was the following week.

Q. And what week was that?

A. That would be the following week after May 26.

(Testimony of Clayton Reece.)

Q. You called at the office during that week?

A. During that week I called at the office twice and they couldn't tell me anything about where I could find him. And I finally went down and asked them my status with the company, and they handed me my separation slip.

Q. When was that?

A. I couldn't say just definitely. [285]

Q. Have you the separation report that was handed you?      A. Yes.

Q. (By Mr. Walker): I hand you what has been marked Board's Exhibit 11 for identification and ask you what that is.

A. That is a separation slip.

Q. Where did you get it?

A. From the Polson office.

Q. When did you get it?

A. I couldn't say exactly when.

Q. I call your attention to the date opposite the entry indication "Date," and I will ask you if it was before or after the date appearing thereon?

A. It was after.

Q. And who delivered it to you?

A. It was one of the office girls. [286]

Q. (By Mr. Walker): Were there any other representatives of the Brotherhood with you at the meeting of May 18? [287]      A. Yes.

Q. Who were they?

A. They were Mr. Lytle, Mr. Lawrence Brant, Mr. Red Williams, and Mr. Sam Key. I believe that is all.

(Testimony of Clayton Reece.)

Q. Who was the spokesman for the committee?

A. Mr. Lytle.

### Cross-Examination

By Mr. Maxwell:

Q. On the morning of May 21, the train on which you worked was proceeding in a westerly direction; is that correct? A. Yes.

Q. The engine was backing up; is that correct?

A. That is right.

Q. And it was pushing, in back of it, as it proceeded westerly, headed easterly, the crummy car?

A. Yes, it was pushing what is known as the crummy car.

Q. And it was pulling behind it, that is, hooked onto the head end of the engine, which was backing up, some other cars? A. Yes.

Q. What kind of cars did you say those were?

A. They were trucks. [288]

Q. What kind of trucks?

A. Logging trucks.

Trial Examiner Kent: What are logging trucks? Are they flat cars?

The Witness: No.

Q. (By Mr. Maxwell): Disconnected trucks is what they are called? A. Yes.

Q. Are they equipped with air? A. No.

Q. As you approached Crossing No. 1, which has heretofore been referred to as Axford Prairie Crossing, where were you riding?

A. Riding on the crummy.



(Testimony of Clayton Reece.)

Q. Were you in the dog house on the crummy?

A. I was in the crummy; that would be the dog house.

Q. The dog house, as the term is used in your answer, means the structure that is built on one end of the crummy? A. Yes.

Q. The end next to the engine? A. Yes.

Q. And you remained in the dog house as the train approached and crossed over Axford Prairie Crossing? A. Yes.

Q. You testified to a conversation with Mr. Groschlose. [289] A. Yes.

Q. Was there anyone else present on May 21?

A. Yes, there were others.

Q. Who were the others?

A. Yes, there were others; I don't recall,—I don't just recall them now.

Q. Suppose you think for a moment. Can you recall that?

A. The timekeeper was in there for one.

Q. Who is that?

A. Jerry,—I can't recall his name.

Q. Is that the timekeeper at Railroad Camp?

A. Yes.

Q. How long had he been there?

A. How long had he been there?

Q. Yes.

A. He had been there all the time I was there.

Q. Would it refresh your recollection,—was Roth there? Was it Roth? A. Yes. [290]

(Testimony of Clayton Reece.)

Q. Anyone else present?

A. And there was a young fellow by the name of Klickman.

Q. Who?

A. I don't remember his first name. His last name is Klickman.

Q. Does he work for the company?

A. At that time?

Q. Yes. A. You mean at that time?

Q. Yes.

A. Yes, he was a kind of an all-around man, a stockman or something like that at the office.

Q. Who else was present?

A. I don't recall anyone else.

Trial Examiner Kent: I am going to ask one question. Had you ever received any instructions regarding flagging at crossings?

The Witness: No.

Trial Examiner Kent: At no time?

The Witness: At no time, no.

Mr. Maxwell: I think I will ask a couple of questions, in view of the last answer.

Q. (Mr. Maxwell, continuing): You had worked as head brakeman, [291] as I understand it, during the period of the last couple of years. That is, during your period of last employment?

A. Yes.

Q. Had you received any instructions on the safe operation of the train? A. No.

Q. In other words, do I understand then the

(Testimony of Clayton Reece.)

company put you to work as head brakeman, and turned the control of the train over to you,—strike that.

As head brakeman, you have control of the train; you are in charge, in other words?

A. Yes, to a certain extent.

Q. Well, you are the one who gives the orders and tells them where to go, and when to go?

A. Yes.

Q. And you get those orders from the train master or dispatcher?      A. Yes.

Q. I understand that you have been put in charge of a logging train, and have never been given any instructions on the safe operation of that train?      A. That is right. [292]

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### DAVID LYTLE

previously sworn, was recalled as a witness by and on behalf of the Board, and further testified as follows:

Trial Examiner Kent: You have a few questions, Mr. Maxwell?

Mr. Maxwell: Yes.

### Cross-Examination

(Continued)

Q. (Mr. Maxwell): Mr. Lytle, you testified that on May 21, when you came in on your run, you saw

(Testimony of David Lytle.)

an "X" in front of your name at the call board at the railroad camp?

A. Back of it.

Q. Well, opposite your name? A. Yes.

Q. And you talked with Mr. Groschlose at that time? A. Yes.

Q. Who else was present?

A. It was outside of the office, by the track.

Q. Was anyone else present?

A. Not that I recall.

Q. When you say outside, you mean outside of what?

A. Outside of the office; outside on the track.

Q. You testified further about a conversation with Mr. Ellingson on Saturday, May 25, 1940, in the office in Hoquiam? A. Yes.

Q. Was anyone else present at that meeting?

[293]

A. No.

Mr. Maxwell: That is all.

Redirect Examination [294]

Q. (Mr. Walker, continuing) Mr. Lytle, I direct your attention to an incident on April,—some time in April, 1940, in which you testified that you told Mr. Ellingson that the brakes on a series of cars were not sufficiently set. Will you describe that incident?

Mr. Maxwell: I don't recall any such testimony.

(Testimony of David Lytle.)

That is going pretty far afield from any issue in this case.

Trial Examiner Kent: I remember some testimony,—I don't remember whether it was on direct or cross,—when the witness did testify something about some cars, runaway cars, or something like that. I think that it was brought out on cross. My recollection is that you did bring it out on cross. Read the question, Mr. Reporter.

Do you remember the question that Mr. Walker asked you, Mr. Lytle?

The Witness: What was the question? [296]

Trial Examiner Kent: I think that you had better read it, Mr. Reporter.

(Thereupon the question referred to was read aloud by the reporter as follows:

“Mr. Lytle, I direct your attention to an incident on April,—sometime in April, 1940, in which you testified that you told Mr. Ellingson that the brakes on a series of cars were not sufficiently set. Will you describe that incident?”)

The Witness: Shall I answer?

Trial Examiner Kent: Yes.

A. Well, it was a train of low trucks, and it was coming down from what they call the camp 4 junction to the Humptulips water tank. Those low trucks,—those are the low trucks about which they have a notice on the board posted: “No setting or releasing of hand brakes while locomotive is in mo-



(Testimony of David Lytle.)

tion." The locomotive had slipped a tire; so there was not enough braking power on the locomotive; and there was insufficient hand brakes, too, because you couldn't set sufficient hand brakes while they were stopped and then start the train, because, if you did that you would pull the train in two. So, at the time we came down there, the train was not under control enough to hold the cars,—

Q. Now, did you have a conversation with Mr. Ellingson concerning that? A. Yes. [297]

Q. How did that arise?

A. Mr. Ellingson,—at that time, we passed a section crew, and one of the section crew told Mr. Ellingson we came down too fast, and Mr. Ellingson came to me and asked me about it.

Q. What did you say to him?

A. I told him there probably wasn't brakes enough on it to hold the train without the help of the locomotive, and that she had lost a tire and could not give the braking power which it had before, and it could not be helped.

Q. What did he say?

A. He said that is all he wanted to know.

Q. Was there anyone discharged as the result of that? A. No.

Q. Was there anyone suspended? A. No.

Q. Was there anyone reprimanded?

A. No.

Q. At any time while you worked at the Polson Logging Company, have you been a member of any labor organization other than the Brotherhood?

(Testimony of David Lytle.)

A. Yes, I was a member of the A F of L, and also a member of the IWA for a while.

Q. At any time, did you sever your membership with any of the other unions?

A. With the IWA, I think, about six months before we presented [298] our agreement to Mr. Polson. [299]

Q. At the time you worked for the Polson Logging Company, or during the time that you have worked for the Polson Logging Company, have you worked on a train which pushed a series of cars ahead of it? A. Yes.

Q. When was the last time you did that before your employment ended at Polson?

A. That would be pretty hard for me to recall. That was a long time ago.

Q. Well, how long ago? Was it a year, two years or three years?

A. Do you want me to go into detail?

Q. No. A. It would be,——

Q. When did Mr. Ellingson or when did Mr. Groschlose take over Mr. Gordon's job?

Mr. Maxwell: I will object to that as totally immaterial.

Trial Examiner Kent: I suppose counsel's purpose is to establish some date.

A. 1938, I believe; I am not sure as to that, however. [302]

Trial Examiner Kent: On the record.

Q. (Mr. Walker, continuing) Was it one or two or three years ago?

(Testimony of David Lytle.)

A. It was about two years ago.

Q. You mean it was two years before the time of your discharge?

A. It was just before,—it was before I was discharged on May 21, 1940. It was before that. If I could explain I could tell why we shoved them across.

Q. (Mr. Walker, continuing) When was the last time a series of empty logging cars were pushed out ahead of the locomotive, heading westward out of railroad camp?

A. That was probably in 1934. [303]

Q. (Mr. Walker, continuing) When a train is pushing a string of empty cars at any time, where is the brakeman?

A. Out on the car.

Q. Does that apply, whether he is crossing a crossing or not?

A. Yes.

Q. Does that apply whether he is crossing a crossing or not?

A. Yes, sir.

Q. When you said the brakeman is out on the car, what car is the brakeman on?

A. The head brakeman is usually out on the point; that is, the farthest from the locomotive; and the second brakeman may be back in the middle, or he may be back in the crummy.

Q. Did the time of day have any effect upon the manner in which the trains were operated over crossings?

A. Shoving cars?

Q. Any way?

A. No.

Q. Would the time of day make any difference

(Testimony of David Lytle.)

concerning the manner of the operation of the train over crossings, if you were [304] shoving cars?

A. No.

Q. (Mr. Walker, continuing) What kind of cars operated on the Polson line?

A. Low, disconnected trucks, and high disconnected trucks, and skeletons.

Q. Who was the trainmaster in 1937?

A. Bill Gordon.

Q. Now, did that accident which occurred in 1937 occur before [305] you were called back to work by Mr. Gordon, or afterwards?

A. Before.

Q. Were you discharged as the result of that accident?      A. No.

Q. Were you suspended?      A. No.

Q. Were you reprimanded as the result of that accident?      A. No.

Mr. Maxwell: There is no evidence of the discharge of Mr. Latonville.

Trial Examiner Kent: Who was Latonville?

Mr. Walker: He was his second brakeman on the train.

Q. (Mr. Walker, continuing) Was he reprimanded?

Mr. Maxwell: Mr. Examiner, I am objecting to this question, and I move to strike the prior question and answer relative to the same incident in 1937, on the ground that the same is incompetent, irrelevant and immaterial to any issue in this case.



(Testimony of David Lytle.)

There is no showing in the record of all the facts of the 1937 accident. If we are going into it, we will have to bring it all out, and that will bring us into a collateral field.

Mr. Walker: That is why I didn't see why counsel went into it on cross examination. I will join with him that it all be stricken.

Trial Examiner Kent: The record may remain, but I see nothing [306] to be gained by going into it further. [307]

Q. (Mr. Walker, continuing) When Mr. Ellingson stopped at the Axford Prairie Crossing on the morning of the 21st, what did he do?

A. He stopped his car.

Q. (Mr. Walker, continuing) And then what did he do? A. Then he got out of his car.

Q. Where had you been just before Mr. Ellingson drove up?

A. Shortly before he drove up, I had been on the flat car straightening out some supplies.

Q. (Mr. Walker, continuing) I direct your attention to your testimony on cross examination when you stated that you had seen Mr. Ellingson at other crossings at other times than May 21st?

A. Yes.

Q. Do you recall that? A. Yes.

Q. At what time of day had you seen Mr. Ellingson at other crossings at different times?

A. As I recall right, in the afternoon. [309]



(Testimony of David Lytle.)

Q. Had you ever seen Mr. Ellingson at any crossing at 5:30 in the morning? A. No.

Q. What was the visibility on the morning of May 21st?

Mr. Maxwell: I will object to that as totally immaterial; it has been gone into. A. Clear.

Mr. Maxwell: Just a moment: I move that the answer of the witness be stricken.

Trial Examiner Kent: The answer may be taken. I remember the engineer testifying, but I don't remember this witness testifying.

Q. (Mr. Walker, continuing) Referring to what has been marked as Board's Exhibit 10, will you indicate with this pen (indicating) where you were standing in the doghouse on the morning of May 21st, at the time you saw Mr. Ellingson drive up? [310]

Mr. Maxwell: Just a moment. I am going to object to this upon the ground that it is totally immaterial. This witness testified that he was in the doghouse when they approached the crossing, and when they crossed it. It doesn't make any difference where he was in the doghouse. The issue here is whether he was discharged for membership and activities in the Brotherhood, or whether he was discharged for violation of the Safety Rules and Unsafe Operation.

Mr. Walker: You asked him where he was.

Mr. Maxwell: I certainly did, and he said he was in the doghouse.

(Testimony of David Lytle.)

Mr. Walker: And I asked him where in the dog-house.

Trial Examiner Kent: The answer may be taken.

A. You want me to mark where I stood?

Q. (Mr. Walker, continuing) Mark that on Board's Exhibit 10.

A. All right. (Witness marking on exhibit)

Q. (Mr. Walker) You have now drawn a circle in ink on the portion of the sketch which indicates the plan of the crummy; is that correct?

A. That is right.

Mr. Maxwell: You had better have him indicate what it is. This zero (indicating) refers to Mr. Lytle?

The Witness: You want me to write here (indicating)?

Trial Examiner Kent: Put your name on there.

The Witness: All right. Here (indicating).

[311]

Q. (Mr. Walker, continuing) I direct your attention to your testimony on cross examination, being directed by Mr. Alex Polson to flag the crossings No. 3 and 5 at night. A. Yes.

Q. Have you been directed by either Mr. Ellingson or Mr. A. M. Polson or Mr. Arnold Polson to flag crossing No. 1, either day or night? [312]

#### Recross Examination

Q. (Mr. Maxwell) Many years ago a series of

(Testimony of David Lytle.)

disconnected trucks or cars were pushed across crossings ahead of the engine; isn't that correct?

A. From Polson's?

Q. Yes.

A. How many years ago do you mean?

Q. You said in 1934,—you said 1934 was the last time you had done it.

A. That is when I went to work there.

Q. At that time they were pushing empties ahead of the engine in the direction in which it was moving; is that right?

A. I believe they pushed a few trains across there.

Q. That has not been done for some time, has it?

A. No.

Q. And why has that not been done?

Mr. Walker: If you know.

A. They found out they could get around that. They fixed the yard so that they could get around that.

Q. (Mr. Maxwell, continuing) Were you instructed not to push them but to fix up the train so that the cars would be pulled by the engine?

A. It was really no instruction; they really got to pulling them; the trainmen started it themselves.

[313]

Q. Who was Mr. Morgan?

A. Mr. Morgan was the superintendent.

Q. Did Mr. Morgan instruct you not to make up the trains so as to push the cars across the crossings?

(Testimony of David Lytle.)

A. I believe Mr. Morgan,—if I understand it, Mr. Morgan, when he took over at the yard, fixed it up and told them to pull their trains.

Mr. Maxwell: That is all.

#### Redirect Examination

Q. (Mr. Walker) How was that done?

A. Well, they would pull their train up here,—if they were going to pull the train instead of push it, they would get the train on a track, unhook the locomotive, and switch onto another track and go to the other end of the train. When you shove the cars, you are on the opposite end of the train. When you pull, the locomotive is at the head of the train.

[314]

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#### TONY PLESHA

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. Are you employed by the Polson Logging Company? A. Yes.

Q. How long have you been employed by them?

A. Well, better than 20 years, anyway.

Q. Have you been employed in the railroad service? A. Yes.

Q. When did you start in the railroad service?

A. I think it was 1937.

(Testimony of Tony Plesha.)

Q. Since 1937, what kind of work have you done in the railroad service?

A. Mostly with the construction gang.

Q. Are you a member of any labor organization?

A. Well, yes. [316]

Q. Which one?

A. Well, of course, down here we have the CIO; and we turned around and joined into the Brotherhood.

Q. Now, have you ever done any work on Camp 14 landing?           A. Yes.

Q. Do you know Bennett Ellingson?

A. Yes.

Q. Along in April or May of 1940, did you have a talk with Mr. Ellingson about the Brotherhood?

A. Yes. That happened at the landing. We planned to leave a donkey there and Mr. Ellingson, just like always when he comes around, he asked me and the engineer if we belonged to the Brotherhood, and I told him we did, and then he says, "What are you fellows going to do if the Northern Pacific takes you over?" And the engineer answered and said, "Polson still owns the railroad."

Q. Was there anything else said?

A. That is all I know.

Q. Had you heard anything about the Northern Pacific taking it over before this conversation with Mr. Ellingson?           A. No.

Q. Have you ever heard anything about it since?

A. No.

Mr. Walker: That is all.



(Testimony of Tony Plesha.)

Cross Examination [317]

Q. (Mr. Maxwell) The Northern Pacific is a common carrier? A. Yes.

Q. If the Northern Pacific took it over, you could still continue to be members of the Brotherhood? A. I think so.

Q. They represent common carrier railroad employees? A. Yes.

Q. Who was present at the discussion that you have referred to? A. What did you say?

Q. Who was present at this discussion?

A. Bert Fenton.

Q. And who was he? A. My engineer.

Q. Was Mr. Ellingson angry when he asked you this? A. No.

Q. (Mr. Maxwell, continuing) Did he speak in an ordinary tone of voice? A. Yes, he did.

Q. (Mr. Maxwell, continuing) Did he say that the Northern [318] Pacific was going to take the railroad over because you were joining the Brotherhood?

A. Well, I couldn't tell you if he mentioned that, of course. [319]

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C. B. GROVES

a witness previously sworn on behalf of the Board, was recalled and further testified as follows:

Recross Examination

Q. (Mr. Maxwell) Will you state your name, please? A. Columbus B. Groves.

(Testimony of C. B. Groves.)

Q. You are the same Mr. Groves who has testified here before?      A. I am.

Mr. Maxwell: I would like to have the record show that I am calling Mr. Groves for further cross examination.

Trial Examiner Kent: The record may so show.

(Discussion off the record)

Q. (Mr. Maxwell) Mr. Groves, in the operation of the logging trains of the company, there were certain unwritten rules governing the operation, were there not?

A. Well, I don't know what you would call an unwritten rule.

Q. Regulations requiring, for instance, flagging at crossings?

A. Well, we had no regulations, only what we practically used ourselves, as far as I know anything about. I was never told any regulations. [342]

As I stated before, when I went up there, I worked second for about a month and a half. When I got the head job, I was in a camp on a switch engine and I had two crossings to go over.

I also worked second on that same job, and I did just as the other men did.

Q. Were you ever instructed regarding the operation of the trains by Mr. Groseclose or Mr. Ellingson?

A. I was told by Mr. Groseclose at one time that unless Ellingson wanted us to flag the crossings—and at that time I was running over the three cross-

(Testimony of C. B. Groves.)

ings,—I asked him which crossing, and he said “No. 1 crossing”, and I said, “I will stop and flag that crossing”, and he said “No, you don’t have to stop.”

Q. But there were regulations or instructions requiring you to flag those crossings, were there not?

A. I am just stating the facts of what I was told.

Q. As a matter of fact, isn’t it true that there were certain unwritten regulations or instructions which were to be lived up to by the trainmen in the operation of the trains?

A. There might have been, but I don’t know what they would have been.

Q. Well, you testified in a Representation hearing, did you not, held last December, in this Brotherhood’s petition for representation? [343]

A. I did.

Q. On behalf of Polson and Ozette Company employees? A. Yes.

Q. To refresh your recollection—at page 288, Mr. Stevens asked you:

“Q. There are certain unwritten rules that govern your conduct, and in the event that you don’t comply with them, you would expect to be criticized by your employers?

“That is right.”

That is correct, isn’t it? A. That is right.

Mr. Maxwell: That is all.

Mr. Walker: Is that on page 288?

(Testimony of C. B. Groves.)

Mr. Maxwell: That is right, counsel. I think you will find that it is the last question that was asked Mr. Groves by Mr. Stevens. It is near the top of the page.

Mr. Walker: Oh, yes. Just one moment, Mr. Groves.

That is all.

Mr. Maxwell: At this time, Mr. Examiner, I should like to renew my motions to strike the testimony, page 162, line 1 to page 165, line 22. Do you want the argument on the record?

Trial Examiner Kent: Yes, that will be all right.

Mr. Maxwell: This testimony is hearsay. It is incompetent, irrelevant and immaterial. And in so far as it relates to a [344] conversation with Vic Lehman, there has been no proper foundation laid for it.

Mr. Maxwell: I also renew my motion and move to strike the testimony reported in the transcript, page 228, lines 5 to 21.

Trial Examiner Kent: You have already made those motions.

Mr. Maxwell: Yes.

Trial Examiner Kent: I will likewise reserve ruling on that, pending consideration of the entire record.

Mr. Maxwell: I move to strike the testimony of Mr. Lawrence Brant, page 255, line 1 to page 268, line 17, which is the rest of his testimony, upon the ground that the same is totally and wholly

irrelevant and immaterial, incompetent, and has no bearing upon any issue in this case.

Trial Examiner Kent: I will reserve ruling on that, pending consideration of the record.

Mr. Maxwell: At this time, Mr. Examiner, I move for an order directing the dismissal of the charge and complaint in this case, upon the ground that the Board has rested, and the evidence introduced fails to sustain the charges made by the [345] Board in the complaint herein, and that the Board has not sustained the required burden of proof.

Trial Examiner Kent: The motion will be denied without prejudice at this time.

Mr. Maxwell: The respondent will call Mr. Arnold Polson.

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### ARNOLD POLSON

previously sworn, was recalled as a witness by and on behalf of the Respondent, and further testified as follows:

#### Direct Examination

Q. (Mr. Maxwell) Your name is Arnold Polson?  
A. Yes.

Q. And you are the same Mr. Polson who has testified heretofore?  
A. Yes.

Q. Mr. Polson, when did the employees of the Polson Logging Company organize or become affiliated with the Union?

A. They became affiliated in, I believe, 1935.

Q. And what union was that?



(Testimony of Arnold Polson.)

A. The Carpenters & Joiners of the American Federation of Labor.

Q. Do you recall the number or the name of the Local Union?      A. No, I don't recall them.

Q. After your employees became affiliated with that union, did you have any dealings with the Union? [346]      A. Yes.

Q. And what were those dealings?

A. Oh, such as ordinarily would—oh, ordinary dealings covering the work done in connection with our operations.

Q. Will you explain that a little more fully?

A. Well, we met with the representatives of the Unions at different times at their request to negotiate and adjust different—adjust differences,—that is, the conditions under which the men worked and by which the work of the company was performed.

Q. In 1935, was there any other union than the A. F. of L. Local you have indicated representing your employees? Do you understand my question?

A. There was the Boommen and Rafters Union representing the Boommen and that was the—the rest of our employees were all in the—were all in the larger local on Grays Harbor.

Q. The Logging Company employees?

A. Yes.

Q. Were members of the larger Local?

A. Yes. [347]

(Testimony of Arnold Polson.)

Q. (Mr. Maxwell, continuing) Did you deal with any other union as the representative of your employees? A. No.

Q. How long did your employees remain affiliated or have the A. F. of L. Union as their bargaining agent?

A. I believe until sometime in 1937.

Q. What occurred at that time?

A. They joined the CIO and gave us notice that the CIO was the bargaining agent for them.

Q. Did the company thereafter negotiate with the CIO? A. Yes.

Q. And how long did the CIO represent your employees?

A. It has represented them from that time up to date, and does now.

Q. Have you dealt with any other union since 1937, as the bargaining agent for the employees?

A. No.

Q. How were you informed of the shift from the A. F. of L. to the CIO by your employees?

A. By letter; by letter, and also by different members of the Committees who were in the CIO.

Trial Examiner Kent: You mean the committees that finally served when the A. F. of L. was representing them, came in and told you they were——

The Witness: (Interposing) They came in and told us they [348] were CIO.

Trial Examiner Kent: I see.

(Testimony of Arnold Polson.)

The Witness: They all went over in a body.

Q. (Mr. Maxwell, continuing) Have you served the Polson Logging Company in any other capacity than your present capacity, Mr. Polson?

A. Yes; I have served it in various capacities. Before I was manager, I was superintendent; and before that I worked in various capacities.

Q. As superintendent of the company, what were your duties?

A. The general supervision of the woods operation of the logging company which included the location of the railroads, the construction, the bucking and falling, train operations, supervision of the logging equipment, the yarding and loading and the unloading of the logs at the boom,—general supervision of the entire operation.

Q. When did you serve in the capacity of general superintendent?

A. From 1930 until the early part of 1934.

Q. Since 1934, have you continued in a supervisory capacity?

A. Yes. I was,—for a time there, I was both manager and superintendent, and in 1934, there was another superintendent appointed under me, as I was acting as manager.

Q. Will you state whether or not the company had any rules or regulations regarding the operation of their trains? [349]

A. Yes, they did have rules and regulations.

(Testimony of Arnold Polson.)

Q. In what form were those rules and regulations?  
A. They were verbal.

Q. What did those rules and regulations concern, Mr. Polson?

A. They concerned the dispatching of the trains, the operation of certain signal boards, sending flag men out if the train stopped when there was another one behind it, and also rules covering flagging crossings.

Q. Calling your attention to the date in the year 1940, were those rules and regulations in force at that time?  
A. They were.

Q. How long had those rules and regulation been in force?

A. Those rules and regulations had been in force,—I don't know how long, but they were in force in the early 20's.

Q. Calling your attention to the year 1940, I will ask you whether or not the logging railroad crossed the state highway at any points?

A. In 1940, it crossed it at three points.

Q. What were those three points?

A. They were crossings, 1, 3 and 5.

Q. Were any of those crossings given other designations than Nos. 1, 3 and 5?

A. They were sometimes described. The No. 1 crossing was sometimes described as the Axford Crossing; the No. 3 crossing was generally,—was nearly always referred to as the No. 3 [350] crossing; and the No. 5 crossing was either called that or the Ozette crossing.

(Testimony of Arnold Polson.)

Q. What were your regulations regarding the flagging of these crossings?

A. All trains were required to flag if there was anything ahead of the engine. If there was only the crummy or caboose, the brakemen were instructed to get out on the head end and if the engineer didn't slow down so that everything was under full control, in case the crossing was occupied, that they would slow the engineer down so that you could stop. If there were other cars ahead,—if there were more than that, they were instructed to stop and then flag the crossing.

Q. Was it the custom of the company to make up their trains so that the engine would push the crummy and other cars ahead of the engine, in the direction in which it was going?

A. In 1940, it was generally the custom to only push the crummy ahead of the engine, although there were cases occasionally where there were empties pushed ahead.

Q. Where there were empties and the crummy pushed ahead of the engine, what did your flagging regulations require?

A. They required that the engine stop; that the engine stop and then be flagged across.

Q. Well, by whom?           A. By the brakeman.

A. And where was that flagging done from? [351]

A. It was done from the head end of the train.

Q. Did the brakeman remain on the train?



(Testimony of Arnold Polson.)

Mr. Walker: Just a moment. I object to that as just leading.

Mr. Maxwell: All right.

Q. (Mr. Maxwell, continuing) Where was the brakeman when he flagged?

Mr. Walker: I object to that as repetition. He has already answered that question.

Trial Examiner Kent: He may answer.

A. If there was just the one car ahead of the engine?

Q. (Mr. Maxwell, continuing) The question was, I believe, if they were pushing the crummy and some empties ahead.

A. In that case, the brakeman was to stop the train and get off and look, and then if the road was clear, flag them on.

Q. If they were pushing only the crummy ahead of the engine, what did your regulations require?

A. They required that the train be slowed down enough to be under full control for an emergency stop, if necessary, and then when they got to the highway, the head brakeman would give the signal for the men to proceed.

Q. From what point would the brakeman flag?

A. From the forward part of the crummy.

Q. How were these regulations enforced, Mr. Polson?

A. They were enforced by,—well, those were standing orders; and they were enforced by the inspection of different people in [352] supervisory capacities.

(Testimony of Arnold Polson.)

Q. Do you know of your own information whether or not the regulations and rules were observed and followed by the trainmen?

A. They were.

Q. Mr. Polson, calling your attention to the date of May 21, or a few days shortly thereafter, did Mr. Ellingson make a report to you concerning the flagging of any crossing?      A. Yes.

Q. And what was that report?

A. He reported that the,—that a train had failed to flag the No. 1 crossing, and told me he had been out there on one of his inspections and had noticed it. He said there was nobody out on the front end of the car to flag.

Q. Did he state who the brakemen were on that train?      A. Yes, he told me.

Q. Who were they?

A. They were Lytle and Reece.

Q. Did you talk with anyone else concerning this incident?

A. I later talked with Mack Polson about it.

Q. Who was present at that time?

A. The first time we talked, we were alone, and later, Mr. Ellingson and Mack and myself were present.

Q. You refer to Mack Polson, and that is——

A. (Interposing) Alec. [353]

Q. A. M. Polson or Alec Polson?

A. A. M. Polson, or Alec Polson.

Q. Where did this conversation take place?

(Testimony of Arnold Polson.)

A. The conversation between the three of us took place at the railroad camp.

Q. And will you state what transpired there?

A. We had a general discussion over the failure of this train to stop at the crossing, as that is something that we have had to watch all the time, and it is something that had been watched, as there had been several serious accidents caused by cars hitting trains, and it was——

Mr. Walker: (Interposing) Just a moment. I object to the witness going into any reason why they held a discussion on it. The fact that they held a discussion is the ultimate fact.

I move that that portion of the witness' answer beginning with the word "as" and subsequent thereto, be stricken.

Trial Examiner Kent: It may be stricken. You may inquire further.

Q. (Mr. Maxwell, continuing) What was said at that time regarding the failure of this crew to flag the No. 1 crossing,—to the best of your recollection?

A. Well, there was discussion as to why they had failed to flag it, and there was no good reason, nor nothing developed as to why, to account for that failure. I guess that is all. [354]

Q. Pardon? A. That is all.

Q. Was anything reached as to a decision as to what was to be done because of their failure to flag?

A. Yes.

Q. What was that decision?

A. To discharge them.

(Testimony of Arnold Polson.)

Q. And were they discharged?

A. They were.

Q. Mr. Polson, calling your attention to the date of May 21, 1940, do you recall what occurred on that date,—correction,—May 16, 1940, do you recall what occurred on that date?

A. Mr. Lytle contacted me and asked me if I would meet with a committee the following Saturday.

Q. Refreshing your recollection, I hand you a calendar for May, 1940. I will ask you if he contacted you first on May 18?

A. I believe it was about that date,—let's see, the 18th is on Saturday. No, he contacted me previous to that.

Q. Did you meet with a committee on May 18?

A. I did.

Q. And what committee was that?

A. It was a committee composed, I believe, of Mr. Lytle, Mr. Reece, Sam Key, Mr. Williams and Mr. Lawrence Brant.

Q. Will you state where the meeting was held? [355]

A. The meeting was held in the offices of the Polson Logging Company at about 11:00 o'clock in the morning.

Q. Where are these offices?

A. At the corner of 8th and Levee Streets, in Hoquiam.

Q. Was anyone else present representing the company besides yourself?

(Testimony of Arnold Polson.)

A. Mr. A. M. Polson and Bennett Ellingson.

Q. Now, will you state what transpired at the meeting on May 18?

A. I was presented with a letter and a form of an agreement by Mr. Lytle of the committee.

Mr. Maxwell: Off the record for a moment.

Since we haven't the——

Trial Examiner Kent: You can use the copies and name them as marked.

Q. (Mr. Maxwell, continuing) Handing you herewith Board's Exhibit No. 4, I will ask you if that is the letter and the agreement received by you?

A. Yes, this is a copy, I believe.

Q. Now, will you tell just exactly what transpired at that meeting, after you were given the letter and the agreement marked Board's Exhibit No. 4?

A. I was handed the letter and requested,—and they requested that it be signed. I told them that I couldn't sign it, that we had an agreement with the IWA Local of the CIO, where they [356] were the bargaining agency. But they kept on pressing and wanted an answer, and I told them that I would refer that agreement to our attorney. And they asked for a written reply, and I told them that after I had had a chance to take it up with an attorney, that I would write them regarding it.

Q. Do you recall anything else that transpired at that time?

A. Yes. There was quite a little conversation.



(Testimony of Arnold Polson.)

In presenting it, they gave all the reasons for presenting it—they volunteered it—that they were dissatisfied with the IWA, and that they were leaving it, as they felt—that they were leaving it, as they preferred the other—expressed a preference for the—for the other bargaining agency—they expressed a preference for a change.

Q. What union, if any, did they express a preference for?

A. They expressed a preference for, I think, the Brotherhood of Firemen, Locomotive & Enginemen and the Brotherhood of Trainmen.

Q. Did you say anything in response to that?

A. Well, they kept questioning and talking and made one remark——

Q. Speak up a little louder; I can't hear you.

A. They kept asking questions and I remarked that I was rather surprised because I had met with a good many of them, or met with the different ones on this committee when they were representing the CIO.

Q. Calling your attention to the testimony of Mr. Lytle, the [357] transcript page 58, I will ask you if this is correct, or substantially correct:

“A. And he”—referring to you, Mr. Polson—  
—“wanted to know why we were pulling out of I.W.A.”

Did you ask them that?

A. No, I didn't ask them that.

(Testimony of Arnold Polson.)

Q. Stating and quoting further from the official transcript, page 58, Mr. Lytle testified:

“He”—meaning you,—“said he thought we would be better off by staying in the IWA and not splitting it up, as he was running a logging camp and not running a railroad.”

Did you state that, or substantially that?

A. No. There was general conversation there, but I don't believe that those were the words, I don't believe.

Q. What is your collection of what was said? You said that there was conversation?

A. Well, I believe that I expressed surprise of their pulling out of the IWA, because I had met with different ones of them on committees for the IWA.

Q. Do you recall stating that you thought they would be better off if they stayed in the IWA?

A. No, I think that on that, that when they were inquiring about that, I believe I told them that whatever the union that they belonged to, that was for them to decide, that the company couldn't mix in it. [358]

Q. Referring further to the transcript, page 58, Mr. Lytle said that you

“thought that one union would be better than two”.

Was anything further said on that?

A. Well, I don't believe that I was advising

(Testimony of Arnold Polson.)

them what union to belong to. As I said before, the matter of the Union choice was up to them; we couldn't interfere.

Q. Did you state that, "that two would probably give us the jurisdictional dispute". A. No.

Q. I beg your pardon? A. No.

Q. Referring to the official transcript, page 59, line 23, Mr. Lytle quotes you as saying,

"Mr. Polson said he thought they were making a mistake."

Did you make that statement?

A. That I told them I thought they were making a mistake? No.

Q. Referring to the official transcript, page 60, Mr. Lytle quotes himself as saying to you:

"You be sure to give us a written answer to our letter".

Did Mr. Lytle ask you that?

A. Yes, I was asked that.

Q. Did you reply to that?

A. Yes; I said that I would give them an answer. [359]

Q. Did you thereafter give them an answer?

A. I did.

Q. And handing you Board's Exhibit 3, I will ask you if that is the answer that you gave him?

A. Yes.

Q. Did the National Labor Relations Board thereafter conduct a Representation hearing?

(Testimony of Arnold Polson.)

A. They did.

Q. What was the result of that hearing?

A. That the application of the Railway Brotherhoods to be a bargaining agent representing certain employees of the Polson Logging Company and Ozette Railway Company was denied.

Mr. Maxwell: I would like to ask that the decision of the National Labor Relations Board in Representation Cases Nos. XIX R 538 and XIX R 539, and the Board's decision therein, bearing Board's No.——

Mr. Walker: R 2217 and R 2218.

Mr. Maxwell: (Continuing) ——be taken notice of by reference.

Trial Examiner Kent: You mean—you are not offering the transcript?

Mr. Maxwell: No, I am just calling the attention of the Board to the decision in those cases.

The Member: Yes. The record may so show.

Mr. Maxwell: Your witness.

#### Cross Examination [360]

Q. (Mr. Walker) Mr. Polson, calling your attention to your testimony concerning the meeting of May 18, 1940, and particularly where you testified that the committee kept questioning you and in reply to that you expressed surprise because you had met with some of the committeemen when the same were representatives of the CIO; now, will you tell us in what words you expressed your surprise to the

(Testimony of Arnold Polson.)

men who had left from the IWA for the Brotherhood?      A. Expressed surprise?

Q. Yes, sir.

A. Well, I don't believe that I could give you the—I don't believe that I could give you the exact words, but it was from—from my recollection of the meeting, it was friendly and it was mild, and there was no strong language used, and if it was anything, it was done in a friendly way.

Q. Well, can you tell us what your words were in expressing your surprise to the men? What did you tell them that conveyed your surprise?

A. I don't—I don't remember exactly, but I was surprised to see a group come in, I think some of them were in not very long previously, on a committee, and then to have them in again representing another one,—another organization.

Q. Now, on May 21st, Mr. Ellingson reported to you that he had discovered that Mr. Lytle and Mr. Reece had failed to flag crossing No. 1, is that correct? [361]

A. He reported that they had failed to flag the crossing, very shortly after that failure.

Q. And you and Mr. A. M. Polson and Mr. Ellingson conferred on the matter?      A. Yes.

Q. As the result of that, it was determined to discharge Mr. Lytle and Mr. Reece?      A. Yes.

Q. And they were discharged because of failure to flag crossing No. 1, is that correct?      A. Yes.

Q. You, yourself, have checked on the movements



(Testimony of Arnold Polson.)

of the train to determine whether or not the trainmen do flag crossings, is that correct?

A. I have, at different times.

Q. Prior to May 21, 1940, when was the last preceding time you did that?

A. I do it whenever I can, when I am driving along the road, but I couldn't give you the exact date of it.

Q. About how long?

A. Well, I am up there fairly frequently, but I couldn't give you the—I might be up there two or three times a week, and then it might be for a week or more than I wouldn't be up there. But when I see, when I know there is a train near, why, I will wait and see. [362]

Q. Then the last time you made a check preceding May 21, 1940, it was sometime in the week preceding May 21?

A. I didn't say that. It was not very long before that, but I couldn't give you the exact date.

Q. Sometime in that week or the week preceding the week,—either a week or two weeks preceding May 21st?

A. Yes.

Q. What train did you observe?

A. I don't recall.

Q. What crossings?

A. They were crossing—let's see. Again, I don't recall. That happened over a year ago.

Q. What kind of a train?

A. Well, I have seen both loaded trains—both trains of loads and empties.

(Testimony of Arnold Polson.)

Q. Where were the empties, before or after the engine?

A. The empties were generally behind the engine.

Q. Now, how did the brakeman go about flagging the crossing, whichever one it was,—this incident where the train was pulling a string of empties?

A. Well, I remember one case. I can't give you the crew or the date, when they come up and I was standing there, and they come up and stopped and then took a look around before they went on. The car was standing there.

Q. Which crossing was that? [363]

A. I don't remember the crossing.

Q. Were you in or out of your car?

A. I was in the car. I didn't get out.

Q. All right. When the train stopped, then what happened?

A. Then they went on.

Q. How long did they stop?

A. They just stopped, took a look, and went on.

Q. Was that in accordance with the regulations of the company?

A. Yes.

Q. What kind of empties were they at that time?

A. I don't remember

Trial Examiner Kent: By the way, are there more than one type of empties? The record might be a little bit confused.

The Witness: Yes, there are. We have both the connected and disconnected. We have both the skeleton cars and the disconnected trucks, I should say.

Trial Examiner Kent: What is the distinction between the two?

(Testimony of Arnold Polson.)

The Witness: The distinction is that a skeleton car has a reach,—the timber is the full length of it, in between the trucks, on both ends. And in the disconnected trucks, they,—the logs themselves form or keep, — the trucks are placed under each end of the load and there are no connecting timbers.

[364]

Q. (Mr. Walker, continuing): How far from the crossing did the train stop?

A. Well, it is not right at the crossing.

Q. (Mr. Walker, continuing): How far were you from the train [365] at that time?

A. Oh, I don't remember exactly; maybe 50, or 100 or 150 feet.

Q. Now, did the brakemen get out and flag the train? A. He was already out.

Q. Who was it? A. I don't remember.

[366]

Q. But you can't recall which one, if any, of those was the brakeman?

Mr. Maxwell: I submit that that is argumentative. The question has been answered.

Trial Examiner Kent: You may take the answer.

A. No, it was somebody that I knew, but I didn't pay any particular attention to it. There was nothing to fix it in my mind. The work seemed to be going all right.

Q. (Mr. Walker, continuing): Now, have you acquainted any of your trainmen with your oral rules and regulations?

(Testimony of Arnold Polson.)

A. I satisfied myself when I was up there as superintendent [369] that they were acquainted with them, and that they knew them.

Q. Whom did you tell them to?

A. Well, I travelled on the train, the different trains, at that time, and talked with them about them and found that they knew.

Q. (Mr. Walker, continuing): What did you tell them?

A. Well, I tried to conduct it in the nature of a visit and talked it over and told them — and not to conduct a quiz contest.

I found that they knew them and that they were observing them, and they kept on that way.

Q. Did you ever acquaint any of your trainmen during the period that you were superintendent with your oral regulations concerning flagging of crossings?      A. Yes.

Q. Now, how did you go about that?

A. I asked them if they stopped at the crossings when they had empties ahead, and if they were then flagging the train across if the road was clear. I told them that that was something [370] that we told them that we wanted to enforce that rule.

Q. Anything else?      A. What do you mean?

Q. Well, is that all that you said to your trainmen in acquainting them with that oral regulation?

A. I couldn't say that those were the exact words, but I kept supervision right along with the trainmaster to see that the flagging of the crossings and the other rules were enforced.



(Testimony of Arnold Polson.)

Q. Is the sum and substance of what you said in acquainting your trainmen with the flagging, oral regulations during the period when you were superintendent, to the effect that you asked the trainmen if they were stopping the trains when pushing empties ahead over crossings?

A. Well, it was something that I asked them and that I kept watch of when I was riding around, riding on trains.

Q. Is that the sum and substance of what you said to them in acquainting them with that oral regulation?

A. They already knew those regulations because they had all been up there some time. [371]

Q. (Mr. Walker, continuing): During the period when you were superintendent, in acquainting your trainmen of the company's oral regulations concerning flagging crossings, was the sum and substance of your communication to the trainmen that you asked the trainmen if they were stopping the trains when pushing empties ahead over crossings?

A. I made sure that they understood those,—the rules concerning stopping when they had empties ahead of them and flagging across.

Q. When you were acquainting your employees of the company's regulation concerning flagging crossings, did you, in effect, tell them that the trainmen were to stop the train when pushing empties ahead over crossings?

A. I told them that I wanted that—the gist of it



(Testimony of Arnold Polson.)

was that I told them that I wanted that rule lived up to. It was an old rule. [372]

Q. What did you tell them about the rule?

A. Just what I have said.

Q. What was it?

A. That when they were pushing empties ahead of the engine, that they were to stop and flag the crossing.

Q. Now, did you tell them anything else in addition to that?

A. Well, it has been over ten years, and I can't give you that conversation verbatim. That is about as close as I can come to it. They apparently knew and understood.

Q. Did you tell any of the trainmen anything else concerning the oral regulation of flagging crossings, in addition to what you have just described?

Mr. Maxwell: Will you repeat that?

(Whereupon the last question was read.)

A. There might have been other points that I talked with them—talked over with them.

Q. (Mr. Walker, continuing): Concerning other oral regulations?

A. Concerning others,—and perhaps this,—perhaps stopping at the crossings.

Q. Well, you say there might have been. Now, this was a rule and regulation of the company, is that correct? A. Yes.

Q. And you wanted the employees to observe the rules and regulations? [373] A. Yes.

(Testimony of Arnold Polson.)

Q. And you wanted to communicate the rules and regulations to the employees, is that right?

A. Yes.

Q. Now, in communicating your rules and regulations to the employees, did you tell them anything else concerning the manner in which trains should be operated across crossings under the flagging crossing regulations?

A. I couldn't give you everything that I said just verbatim. That has been—1934, has been the last.

Q. What you have described as what you communicated to the trainmen, does that constitute the full extent of the company's oral regulation concerning flagging crossings?

A. No. There is also when they have—if they had the crummy ahead, I might, as in this case here.

Q. (Mr. Walker): What about it when they had the crummy ahead?

A. Flag. [374]

Q. (Mr. Walker, continuing): Well, what did you tell the employees about what to do when the crummy was ahead?

A. Flag.

Q. To flag the crossing? A. Yes.

Q. And did you tell them how to flag the crossings?

A. To approach the crossing—to slow down on approaching the crossing so as to have the train under control so that they could stop if the crossing was occupied. And they were to be out.

(Testimony of Arnold Polson.)

The Witness: The trainmen were to be out on the crummy so as to flag.

Q. (Mr. Walker, continuing): Now, did you instruct any of your trainmen in how to flag a crossing?

A. You mean, get out there and give them an example of how it should be done, is that what you mean? [375]

Q. Well, did you do that? A. No.

Q. Did you instruct your employees on how to flag a crossing? A. Verbally.

Q. (Mr. Walker, continuing): Did you tell your employees that flagging a crossing meant to stop the train, the brakemen get off, walk ahead of the train, stand on the highway with a flag while the train crossed the crossing? [376]

A. There were instructions in one instance as to that procedure.

Q. (Mr. Walker, continuing): And that was the instance where empties were being pushed ahead of the train, is that right?

A. Where they have empties.

Q. I beg your pardon?

A. Where they have empties ahead of the train.

Q. And that is the only time that you instructed your employees that it was necessary to flag a crossing, is that correct? A. No.

Q. What else was necessary to flag a crossing?

A. When they had anything ahead of the engine. [377]

(Testimony of Arnold Polson.)

Q. Now, what do you mean "anything"?

A. When they had a car ahead of the engine.

Q. Even one car?           A. Yes.

Q. Including the crummy?

A. Do you count the crummy as a car?

Q. If that car was just the crummy?

A. If that car was just the crummy, they would flag that across, but by a different procedure than the one you have just previously mentioned.

Q. All right. What is the other procedure?

A. To have a brakeman get out on the head end and flag the train down if it was proceeding too fast, so that it could approach the crossing at slow enough speed so that it could stop, if the crossing was occupied, or if there was anything approaching that they weren't sure would stop.

Q. (Mr. Walker, continuing): What did you mean by the phrase that the brakeman was to be out on the crummy so that he could flag the train down?

A. So that he could give signals to the engineer. [378]

Mr. Maxwell; Just a moment. That is an improper question.

Trial Examiner Kent: Reframe the question.

Q. (Mr. Walker, continuing): Under the Company's oral rules, who was the brakeman to flag?

A. The train,—the engineer. He might also give warning to the approaching vehicles. If he——

(Testimony of Arnold Polson.)

Q. (Interposing): Well, which is it?

A. Both, I would say—if he can keep the train out of the way.

Trial Examiner Kent: Check my recollection. I believe the testimony, as I remember it—the crummy is always the next car preceding the engine, whether or not there are empties ahead of it; that is, even if there are empties ahead, the crummy just precedes the engine, doesn't it?—It isn't on the end?

The Witness: It might be on the head end of the empties, or it might be next to the engine, between the engine and the empties, or it might be on the other end of the engine and the empties ahead,—with the engine in between the crummy and the empties.

Q. (Mr. Walker, continuing): Now, what brakeman did you personally communicate that oral regulation to?      A. At what time?

Q. When you were superintendent. [379]

A. That covers a period of four years or pretty close.

Q. That is right.

A. The brakemen on the payroll at that time.

Q. All of the brakemen?      A. Yes.

Q. Did you instruct Mr. Thomas as to what the rule was as you have described it here?

A. I don't know.

Q. Did you instruct Mr. Williams as to what the



(Testimony of Arnold Polson.)

rule was in the manner that you have described here?

A. I would have to see who was on at that time, because that was during a period of curtailed operations by the company and I don't know—I couldn't recall personally without looking up the records, whom I instructed.

Q. Will you do that, then? A. All right.

Q. Now, have any of the trainmen, since the rule on flagging as you have described it was promulgated, violated that rule other than Mr. Reece and Mr. Lytle? A. I don't know. [380]

Mr. Walker: Well, that is all, Mr. Polson, until you have had a chance to check your employment records and ascertain who were employed as brakemen from the period of 1930 until 1934.

Mr. Maxwell: Do you want every one?

Mr. Walker: Every one.

### Redirect Examination

By Mr. Maxwell:

Q. Mr. Polson, in order to get the picture clear, what was the instructions regarding the flagging of a highway crossing when the engine was pushing ahead of it in the direction in which it was going, the crummy and several empties?

A. They were to stop at the crossing,—stop at the crossing before proceeding across.

Q. And what was the brakeman to do?

A. He was to get off and flag. That is, assure

(Testimony of Arnold Polson.)

himself that [386] it was safe to proceed across, and then flag the train across.

Q. In the event the engine was proceeding and pushing ahead of it only the crummy car, what was the requirement regarding the flagging of a highway crossing?

A. They were to flag the engine,—they were to flag the train down so that they could stop if the crossing was occupied or if there was danger of a collision, and then to get the train under control.

Q. And where was the brakeman supposed to be in doing this?

A. He is supposed to be out on the crummy, or on the head end of the crummy.

Q. Has there come to your attention,—or has it come to your attention that brakemen have failed to flag the crossing, other than in the case of Mr. Lytle and Mr. Reece?

A. I don't recall any.

[387]

Q. (Mr. Maxwell, continuing): Handing you for identification what has been marked for identification Respondent's Exhibit 1, what are those?

A. Those are loggers' safety standards evolved by the Department of Labor and Industries for the State of Washington.

Q. Do the rules and regulations therein govern your logging operations?

A. They do.

Q. I will ask you whether or not copies of Respondent's Exhibit 1 were passed out to and made available to your employees?

A. Yes. [390]

(Testimony of Arnold Polson.)

RESPONDENT'S EXHIBIT No. 1

STATE OF WASHINGTON

Clarence D. Martin

Governor

Department of Labor and Industries

E. Pat Kelly, Director

LOGGERS SAFETY

STANDARDS

(Seal of the State of Washington)

Jay Olinger

Supervisor of Safety

Fred J. Englert

Supervisor of Industrial  
Insurance

Chas. D. Davis

Chief Engineer

Effective January First, 1936

Standards of Safety

for the

LOGGING INDUSTRY

Issued by the

Department of Labor and Industries

of the

STATE OF WASHINGTON

Effective January 1, 1936

Olympia

State Printing Plant

1935

(Testimony of Arnold Polson.)

### EMPLOYERS' RESPONSIBILITY

B—1 It shall be the duty of employers to provide and install all the protective devices specified in these standards, and upon the discharge in a reasonable manner of the duties imposed upon the employer in these standards, any penalty which might otherwise be assessed by reason of accidents caused by violation of these standards shall not be placed on the employer if the absence of such guard, protection or protective device be due to the removal thereof or the failure to use or apply any of these rules by the injured workman himself or by a fellow workman, unless such removal be by order or direction of the employer or superintendent or foreman of the employer or anyone placed by the employer in control or direction of such workman.

B—2 It shall be the duty of employers to appoint only men believed to be competent to supervise other workmen; and those appointed shall in every reasonable degree be responsible for the safety of the men under their supervision.

B—3 It shall be the duty and responsibility of employers to make available to all concerned employees copies of these Safety Standards when same have been furnished by the Department of Labor and Industries, and to keep a copy posted upon the bulletin board of the operator.

(Testimony of Arnold Polson.)

### SAFETY MEETINGS

F—1 Employers should organize monthly safety meetings and provide a suitable meeting place for same and encourage workmen or key men to attend such meetings.

### RAILROAD OPERATIONS

V—1 All persons employed in any service on trains or rail operations are subject to and shall be conversant with all rules and special instructions.

V—2 Employees must render every assistance in their power in carrying out these rules and special instructions and must report to the proper official any violation thereof.

V—4 Any logging railroad operation may maintain a special set of operating rules applicable to their operation, provided that said rules are acceptable to the Safety Division of the Department of Labor and Industries.

V—27 Unless equipped with air, no equipment shall be pushed ahead of locomotive, unless a brakeman is on head car in constant view of the engineer.

### IMPORTANT SECTIONS OF STATE SAFETY LAWS

The State Safety Laws provide for certain fines, criminal prosecution and diminished compensation for violation of the safety standards. Section 7731 of the Code, compels every employer to furnish his



(Testimony of Arnold Polson.)

workmen with a safe place to work in and to furnish all devices and safeguards and comply with all safety rules and regulations of the Department of Labor and Industries.

By Section 7732 of the Code, every workman is required to cooperate with his employer in the safety program. Should an employer or workman remove or destroy any safety device or safeguard, such employer or workman shall be prosecuted criminally for a misdemeanor, and be liable to imprisonment in the county jail for not more than ninety days or pay a fine of not to exceed \$250.00.

The Department of Labor and Industries is required by law to enforce all safety laws and rules in the State. The Department safety inspectors are required to inspect all employers engaged in extra-hazardous work at least once a year or more frequently if desired. (Sec. 7774.) For the failure of any employer to comply with any safety rule or regulation of the Department for thirty days after having received a written notice from the Department to do so, such employer shall be subject to a penalty of not to exceed \$1,000.00, which the Department will collect by suit and pay into the Accident Fund.

Should any workman be injured because of the failure of the employer to maintain proper safety protection, as prescribed by the Department or the safety laws, the employer shall be further assessed the penalty of 50 per cent of all compensation paid

(Testimony of Arnold Polson.)

such injured workman by the Workmen's Compensation Act, and the employer is subject to the same penalty if the employee shall be under age at the time of injury. This penalty, however, shall not be assessed if the accident was caused by the removal of any safeguard by the injured workman himself or by his fellow workmen, unless the removal were under the direction of the foreman or superintendent of the employer. If the removal of any safeguard or protection required by law is done by the injured workman or with his consent by any fellow worker without the order of the employer, the injured workman's compensation from the Department of Labor and Industries shall be decreased 10%. (Sec. 7683.)

Every employer having less than 50 workmen is required to keep at his plant a first aid kit and if he employs over 50 men within a half mile of his plant or works, the employer must keep a first aid station. The contents of the first aid kit and the first aid station must be prescribed by the Department and constitute part of the safety regulations of the State.

Safety rules adopted by the Department after public hearing have the same effect as any law of the State of Washington.

(Testimony of Arnold Polson.)

Trial Examiner Kent: It may be admitted.

(Whereupon the document heretofore marked for identification as Respondent's Exhibit 1, was received in evidence.) [391]

Recross Examination

Q. (Mr. Walker): Mr. Polson, as a result of conversations held between yourself and Mr. Alec Polson and Mr. Ellingson, it was determined to discharge Mr. Lytle and Mr. Reece because of their failure to flag Crossing No. 1, is that correct?

A. Yes.

Q. Is that the sole reason that they were discharged?

A. That was the reason for their discharge.

Q. (Mr. Walker, continuing): Now, to what employees—did you personally pass out any copies of Respondent's Exhibit 1 to your trainmen?

A. No, I didn't personally pass them out. [393]

Q. (Mr. Walker, continuing): You previously testified that copies were passed out to employees, did you not?

A. Yes.

Q. How do you know that?

A. Because they were in camp. They were made available to them. They were put in the bunkhouses and different ones in the different camps passed them out. I went through some of the camps—I went through the camps to see if they were, and I found out that they were.

Q. You are talking about logging camps?

(Testimony of Arnold Polson.)

A. I am talking about all of the camps.

Q. Does that include railroad camps?

A. It does.

Q. Who told you that copies were passed out to your trainmen?

A. The timekeeper of the railroad.

Q. Who is that?

A. I believe that is Mr. Golick, at that time.

Q. When did Mr. Golick tell you that?

A. After they had been sent out and after he and others had been instructed regarding passing them out.

Q. When were the copies sent out to the railroad camp?

A. They were sent out as soon as they were made available to [394] us after they were published.

Q. When were they made available to you?

A. They were made available to us, within, I would say, a month or so after their publication.

Q. Did you ever find out whether Mr. Golick did do that?      A. Yes.

Q. From whom did you find that out?

A. I found out from him, and from others in the different camps.

Q. Well, how about railroad camps?

A. I found out from others. I found out by going up there and making a personal investigation.

Q. You made a personal investigation after Mr. Golick told you that he had passed out the copies

(Testimony of Arnold Polson.)

and found out that he had passed them out, is that correct?      A. That is correct.

Q. And how did you go about that investigation?

A. I went up to camp and saw that they were out, that they were made available—that he had a notice out to—for everyone—a notice to everyone to take a copy, and then I made inquiry of different ones if they were—if they had copies.

Q. Whom did you inquire of?

A. I inquired of—in the shop and of the trainmen.

Q. What trainmen did you inquire of?

A. I don't remember. [395]

Q. Well, did you ask all of the trainmen if they had copies?

A. I didn't go around and ask every one if they had copies, no.

Q. How many trainmen did you ask if they had copies?      A. I don't remember. [396]

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A. M. POLSON

called as a witness by and on behalf of Respondent, being duly sworn, testified as follows:

Direct Examination

Q. (Mr. Maxwell): Will you state your name, please?      A. A. M. Polson.

Q. And are you employed by the Polson Logging Company?      A. Yes, sir.



(Testimony of A. M. Polson.)

Q. In what capacity are you employed?

A. General superintendent.

Q. How long have you held that position?

A. Since the fall of 1938.

Q. As general superintendent, what are your duties?

A. Well, it is the general overseeing of all of the woods operations, from the—starting with the engineering and the [400] construction, the laying of steel, falling and bucking, yarding and loading, trains and hauling, and the dumping of the logs, and the maintenance of all of the machinery.

Q. Calling your attention to the operation of the Polson Logging Company, I will ask you whether or not the company has any safety rules and regulations?      A. Yes, they have.

Q. In what form are those rules and regulations?

A. Well, there are some written rules and some—mostly, they are generally verbal.

Q. Calling your attention to the train operations, I will ask you whether or not there is any rule or regulation regarding the flagging of crossings?      A. Yes, there is.

Q. In what form is that rule?

A. That has been a verbal rule.

Q. What is the rule?

A. For flagging the crossings, the brakemen are required to ride the forward end of the train as it is moving, at all times, and if there are empties

(Testimony of A. M. Polson.)

or cars ahead of the engine, the brakeman is to stop the train before it comes to the crossing and get off on the ground to see that there is no traffic coming and everything is clear before he proceeds.

And if there is only one car ahead of the engine, the brakemen are required to be on the car near the forward end, [401] and within sight of the engineer or the fireman and slow the train down, if necessary, before coming to the crossing, and to proceed across the crossing by flagging the engineer only if it is safe to do so.

Otherwise, he is to stop the train until it is safe and then flag the train to proceed.

Q. Was that rule in force on the 21st day of May, 1940?           A. Yes, sir.

Q. How long prior to the 21st day of May, 1940, had the rule been in force?

A. Well, to my recollection, I came to work in the early part of 1929, and it was in practice then—in force then.

Q. In your capacity as superintendent, what, if any, checks have you make as to whether or not this rule is observed?

A. I have ridden on the trains and been at the crossings from time to time when the rule had either been—would have been observed or violated.

Q. Has been observed or violated?

A. Would have been observed or violated.

Q. Did you ever observe the violation of the rule?           A. No, I haven't.

(Testimony of A. M. Polson.)

Q. Calling your attention to the car that has been referred to as the crummy car, I will ask you whether or not that car is equipped with air?

A. Not in the sense of the ordinary terms. A car to be equipped [402] with air must be equipped with serviceable brakes that are air operated.

The crummy cars are equipped for the purpose of passing the air through them to the other cars only. By that, I mean that they have a train line through the car and that is all.

Q. Assuming that the engine was pushing the crummy car ahead of it and towing empties behind it, could the air brakes be set from the crummy car?

A. Would you read the question again, please?  
(Last question read.)

Mr. Maxwell: I will clarify that a bit.

Q. (Mr. Maxwell, continuing): When I say "ahead of the engine," I mean that the engine is backing up and it is ahead of the engine in the direction that the engine is going.

A. Yes, I think they could.

Q. How would they be set from the crummy car?

A. By opening the angle cock.

Q. And where is the angle cock?

A. On the forward end of the crummy.

Q. Mr. Polson, calling your attention to the date of May 21, 1940, I will ask you if you saw Mr. Bennett Ellingson on that day?

A. Yes.

Q. Where did you see him? [403]

A. At railroad camp.

(Testimony of A. M. Polson.)

Q. Who is Mr. Bennett Ellingson?

A. He is the man who is in direct charge of the operation and maintenance of the trains and train service in our organization.

Q. Did Mr. Ellingson make a report to you on that date?      A. Yes, he did.

Q. And what was that report?

A. He reported to me that there had been a violation of the regulations requiring the flagging of crossings at what is known as the No. 1 or Axford Prairie Crossing.

Q. Well, state what transpired there at the meeting with Mr. Ellingson, if you recall?

A. He reported to me that the engine 18 had gone out that morning quite early, and that he had been headed that way, and that when he got to the crossing, the train was coming and there was no one in sight on the crummy car, and that in checking up he found that Mr. Lytle and Mr. Reece were the brakemen in charge of that train. And he reported the incident to me at railroad camp, and also reported that he had watched these fellows before, doing about the same thing, and thought we should discharge them, and I agreed with his judgment.

Q. Subsequent to May 21st, did you at any time talk over with anyone the failure of Mr. Lytle and Mr. Reece to flag the Axford Prairie Crossing on the morning of the 21st? [404]

(Testimony of A. M. Polson.)

A. Yes; Mr. Arnold Polson and Bennett Ellingson and I talked it over again shortly after that.

Q. And what decision was reached?

A. That the men should be discharged.

Q. Mr. Polson, calling your attention to the date of May 18, 1940, I will ask you what transpired upon that date?

A. May 18, was on the Saturday that the committee of our employees who work on our train service came to our office in Hoquiam. They had an appointment to meet with the officials of the company there at the office in Hoquiam at 11 o'clock, I believe it was,—and they brought with them the form of an agreement and letter of transmittal and presented them to Arnold Polson, and they asked for an answer as soon as possible to the letter. They expressed that they wished to have an agreement signed. They expressed themselves that they were pulling away from the IWA and joining the Brotherhood and wished to negotiate that agreement.

Q. Who was present for the company?

A. Arnold Polson and Bennett Ellingson and myself.

Q. Who acted as spokesman for the company?

A. Arnold Polson.

Q. What reply did Mr. Arnold Polson make to this committee representing the Brotherhood?

A. Well, he asked that the company be given time to study it over and get the legal advice,—get



(Testimony of A. M. Polson.)

some legal advice from [405] an attorney to see whether the company had a right to negotiate with any other committee other than the ones representing the I W of A, which we already had an agreement with.

Q. Mr. Polson, referring now to the official transcript on page 58, the testimony of Mr. Lytle, Mr. Lytle said:

“And he”,—Arnold Polson, “wanted to know why we were pulling out of the IWA.”

Did Mr. Arnold Polson inquire as to that?

A. No, he didn't. The boys, when they came in to talk to us, volunteered the information that they were pulling away from the IWA, and that they were going to join the Brotherhood.

Q. Referring again to the official transcript, Mr. Lytle says:

“He”—Arnold Polson—“said he thought we would be better off by staying in the IWA and not splitting it up”.

Did Mr. Polson make that statement,—well, I will finish the statement—

“as he was running a logging camp and not running a railroad.”

A. No, I can't recall him making that statement.

Q. Do you recall any statements substantially the same as that by Mr. Polson?

A. No, I don't,—I don't think that I do.

Q. Referring again to the official transcript, Mr. Lytle [406] says that Mr. Polson stated

(Testimony of A. M. Polson.)

“that he thought that one union would be better than two.”

Did Mr. Polson make that statement?

A. I don't remember of hearing that.

Q. Was a statement similar to that made by Mr. Polson?      A. I don't remember.

Q. Mr. Lytle further stated that Mr. Polson said,

“that two would probably give us jurisdictional dispute”.

Do you recall that?      A. No, sir; I don't.

Q. Referring again to the official transcript, Mr. Lytle's testimony is as follows:

“Mr. Key and Mr. Brant told him”—Arnold Polson—“that they thought they would be better off in the Brotherhood; that they had joined the Brotherhood and that they wanted the Brotherhood to represent them.

“Q. Did Mr. Polson say anything to that?

“A. Mr. Polson said he thought they were making a mistake.”

Do you recall any such statement by Mr. Arnold Polson, as that?

A. No, I don't recall him saying that.

Q. Were you present at all times during this meeting?

A. Yes, I was there until it was over. [407]

Q. Referring again to the official transcript, and the testimony of Mr. Lytle:

“So we terminated our meeting there, and I asked Mr. Polson for an answer to our letter.

(Testimony of A. M. Polson.)

“Q. What did you say to him?

“A. I told Mr. Polson, ‘You be sure to give us a written answer to our letter.’ And he said, ‘I will.’ ”

Do you recall that?

A. I don’t recall at what time he told them he would give them an answer to their letter, but I recall that they asked for it several times.

They were very insistent about having a written answer to their letter, and he said he would give it to them.

Q. Did he at any time indicate that he would not give it to them?      A. No.

Q. Referring again to the official transcript, page 63, quoting Mr. Lytle’s testimony,

“A. I said, ‘Be sure to give a written answer to our letter.’

“Q. Did Mr. Polson say anything to that?

“A. He said, ‘I will; and don’t forget what I have told you.’ ”

Do you recall Mr. Polson making a statement to that effect? “Don’t forget what I have told you”?

[408]

A. No, sir; I don’t.

Q. Will you describe this meeting on May 18th and what transpired there, generally?

Mr. Walker: I object to that as repetitious.

Trial Examiner Kent: Well, of course, it may be or it may not be. It probably won’t take long to take the testimony.

(Testimony of A. M. Polson.)

Mr. Maxwell: Off the record a moment?

Trial Examiner Kent: Yes.

(Discussion off the record.)

Trial Examiner Kent: The witness may answer the question.

The Witness: Will you read the question, please?

(Whereupon the question referred to was read as follows:

“Q. Mr. Maxwell): Will you describe this meeting on May 18th and what transpired there, generally?”)

A. Well, it is pretty much as I related. These boys from the train service came in and brought that letter and their proposed agreement with them, and it was just,—it lasted probably about 20 minutes or half an hour, and they told us what they wanted.

They said what they had to say, and went on about their business again. It was a very friendly meeting. There was nothing unusual about the meeting at all. It was pretty much the average run of negotiating meetings,—probably on the mild side, I would say.

Mr. Maxwell: Your witness. [409]

Mr. Examiner, and Mr. Walker, Mr. Polson would like to leave now. He would like to be gone for about half an hour or forty-five minutes. Will you want him during that period?

(Testimony of A. M. Polson.)

Mr. Walker: I don't think so.

Trial Examiner Kent: Yes, surely.

Mr. Walker: Were you through with the witness?

Mr. Maxwell: Yes. Your witness.

### Cross Examination

Q. (Mr. Walker): Just as the meeting broke up on May 18, did Arnold Polson walk towards the door with the committeemen as they were going out the door?

A. I don't recall what the actions were right at the last part of the meeting. The whole group of us were—when we finished our business and started to leave, we were all talking, one with the other, and I don't—I didn't notice his actions,—where he was.

Q. Well, let's go back to the meeting as a whole. During the course of the meeting, the representative of the company and the representatives of the union sat around the table in the office there, isn't that correct?

A. Yes. There was a table there. They sat around in more or less of a circle.

Q. And you were sitting over by the table, weren't you?      A. Yes. [410]

Q. And when the meeting broke up, the representatives of the Brotherhood went out the door first, isn't that correct?

A. I couldn't swear to that.

Q. At the conclusion of the meeting, you remained at your place by the table, didn't you?



(Testimony of A. M. Polson.)

A. As I recall it, I was in the room after the rest of them left. I recall that, sir.

Q. In other words, you stayed in the room where you were sitting there by the table as a committee and Mr. Arnold Polson walked over to the door, isn't that correct?

A. I couldn't answer that, sir; I don't know where he went when the meeting broke up,—whether he stayed there for a short time or not; I couldn't answer that.

Q. I believe that you misunderstand me. I don't mean that Arnold Polson concluded the meeting and went out of the room. I mean that he just walked over to the door.

A. I understand what you mean.

Q. And then after he came back he went over to where you and Mr. Ellingson were sitting there by the table. Now, does that refresh your recollection?

A. No, I can't get a sequence there that is—I can't recall that he came back into the room, or when he left the room. That was a year ago. [411]

Q. (Mr. Walker, continuing): Do you have the recollection of Mr. Polson, at the conclusion of the meeting, walking over to the door with the committeeman, not going out of the room, and during that time you and Mr. Ellingson remained where you had been throughout the whole course of the meeting, over by the table? [413]

The Witness: I don't have any recollection of Arnold's movements after the meeting was over

(Testimony of A. M. Polson.)

and it broke up and the boys started to leave, I don't have any recollection of it.

Q. (Mr. Walker, continuing): I call your attention to your testimony on direct examination in which you testified that as superintendent you had been to crossings and ridden on trains to see if the rule had been observed or violated.

How frequently prior to May 21, 1940, had you ridden trains for that purpose?

A. I wouldn't say that I had ridden trains for that one particular purpose at any time. I have observed the movements of trains and the manner in which they are operated at all times when I am on them or see them operating. [414]

Q. How frequently prior to May 21, 1940 did you observe the manner in which trains were operated?

A. Well, I would say that I have no definite schedule as to any of my particular duties. As general superintendent, I check the trains whenever I want to, or see them operating, to see whether they are doing their job right or not.

Q. (Mr. Walker, continuing): And about how frequently was that?

A. Well, there would hardly be a day go by when I wouldn't either see a train operating or be where they were operating.

Q. And from early 1929 when you became superintendent, until May 21, 1940, did you ever observe trains being operated with the crummy being

(Testimony of A. M. Polson.)

pushed ahead when brakemen were not on the head car in full view of the engineer?

A. Yes, I have.

Mr. Walker: That is all.

### Redirect Examination

Q. (Mr. Maxwell): Were you superintendent in 1929, Mr. Polson?      A. No, sir. [415]

Q. Where was the train when you saw the crummy being pushed ahead of the engine and the brakeman wasn't in full view of the engineer?

A. When a train leaves the landing at the unloading grounds at the river, both brakemen usually catch the back end of the train and walk over the empties towards the head end, as they pull out.

There is no crossings in that vicinity, no camps.

Occasionally, there is a section crew or a few men working on a track, but that is all that there could possibly be in the way of a train coming back from the landing. At that time, the crummy car is being pushed ahead of the engine and there is very likely no brakeman on it.

Q. For how long a period would the crummy car be pushed before the brakemen got to it, ordinarily?

A. That would depend upon the length of the train, how long it would take the brakemen to get back there. If it is fine weather, he might take his time. If it is raining, he might hurry up.

Mr. Maxwell. That is all.

(Testimony of A. M. Polson.)

Recross Examination

Q. (Mr. Walker): Have any of the brakemen ever been discharged for not being on the crummy, in full sight of the engineer, when the engine is pushing the crummy ahead?

A. Mr. Lytle and Mr. Reece were. [416]

Q. Anybody else?

A. Not to my recollection.

Q. Have any of these braking crews, as the train is coming away from the logging dump, been discharged for not being out on the crummy in full sight of the engineer as the crummy is being pushed by the engine?

A. No, I don't remember of any time.

Q. (Mr. Walker, continuing): Have any braking crews been reported to you as failing to ride the front end of the string of empties being pushed ahead of the engine across crossings?

A. No, sir; I don't remember of any being reported to me.

Trial Examiner Kent: I am a little confused as to the rule. Does the rule that we have been talking about require that both—there are two brakemen ride in the crummy, aren't there, [417] in the dog house?

The Witness: There are two brakemen on the train, yes, sir.

Trial Examiner Kent: Well, does the rule require that both of them be up front, or either one?

(Testimony of A. M. Polson.)

Mr. Maxwell: You are referring to where they are pushing the crummy only?

Trial Examiner Kent: Well, yes, it would apply there. I think I had a more general situation in mind.

As far as my recollection goes, I was wondering if it would make any difference? Are both required to ride up in front, or just one of the two?

The Witness: It would be different in different situations.

Trial Examiner Kent: Which one would it be?

The Witness: It would depend upon which end of the engine the empties were on, of the train itself they were on. It would also depend upon what train work or what train movements were immediately ahead of the engine, or what that—rather, what the train crews had to do next. Usually they are—the work of a train crew is on the end of the engine that the loads or empties are on.

When they are going out light, the majority of next things to do for the crew is up ahead. That is where the crummy is, usually.

Trial Examiner Kent: That is all the questions that I have. [418]

Q. (Mr. Walker, continuing): Since you have been superintendent until May 21, 1940, have any brakemen of any braking crews been observed by you failing to stop a train, get off, walk ahead, and flag a crossing when an engine is pushing a string of empties ahead of it at a crossing?



(Testimony of A. M. Polson.)

A. No, sir; there haven't been any.

Q. (Mr. Walker, continuing): Has anything of that nature been reported to you since you have been superintendent until May 21, 1940?

A. I don't recall of any.

Mr. Walker: That is all.

Redirect Examination

Q. (Mr. Maxwell): Mr. Polson, you referred to the train pulling out of the logging dump, or the landing, I mean.

A. Yes, sir.

Q. What were the trainmen doing ordinarily while the train was at the landing there?

A. They were assisting in unloading the logs—the two brakemen on each train handle the hook. One handles the hook, and the other one trips the stakes on the bunks that hold the logs on the cars.

Usually their job finished up on the far end of the train or near the middle of the train,—from the middle of the [419] train on up towards the far end. They have anywheres from half to all of the empties to cross when they are coming back to the engine and to their dog house.

Q. And that period, then, when the train might be pushing the crummy ahead of it without the man on it would be that period of time when they were going from their last place of work to their station on the crummy?

A. That is right.

## BENNETT ELLINGSON

called as a witness by and on behalf of Respondent, having been first duly sworn, testified as follows:

## Direct Examination

Q. (Mr. Maxwell): Will you state your name, please?      A. Bennett Ellingson.

Q. Will you spell the last name?

A. E-l-l-i-n-g-s-o-n (spelling).

Q. Are you employed by the Polson Logging Company, Mr. Ellingson?      A. Yes, sir.

Q. In what capacity are you employed?

A. Assistant superintendent. [420]

Q. As assistant superintendent, what are your duties?

A. I work under the superintendent's orders.

Q. What phases of the logging operation do you have charge of?

A. Well, I have several different things. I have grievances, cookhouses, camps, carpenters, repairing trestles, bridges, railroads, railroad logging trains.

Q. I will ask you whether or not the Polson Logging Railroad crosses the state highway?

A. Yes, sir.

Q. At what points does it cross the state highway?

A. Do you mean what sections?

Q. No. How are these crossings commonly designated?

A. Well, the first crossing, No. 1, is the No. 1 or Axford Prairie Crossing. There is the No. 3 crossing and No. 5. Also, there is a No. 6.

(Testimony of Bennett Ellingson.)

Q. Was there a No. 6 crossing on the 21st of May, 1940? A. I don't think there was.

Q. On the 21st of May, 1940, what if any, regulations did the Polson Logging Company have regarding the operation of trains across these crossings?

A. What were their rules?

Q. Yes; regarding the operation of trains across the highway crossing.

A. The performance they had to go through in order to get over [421] this crossing is that it—

Q. (Interposing): Well, did they have any rules regarding the operation of trains over the highway crossings; were there any rules? A. Yes.

Q. And what did those rules concern?

A. They were very strict rules.

Q. Well, what; what did they relate to?

A. Blowing of whistles and different conditions there.

Q. Well, different conditions. What are the conditions?

A. You want me to explain what the conditions were, is that it?

Q. Yes.

A. Well, for showing a string of empties which they don't do very often, but we do it occasionally; on a string a man gets off at the crossing and goes out in the highway. If the road is clear, he flags them ahead, the engineer. The second brakeman is supposed to be on duty along with him, and as a rule stands on the crummy.

If it is a long train, he would probably be in

(Testimony of Bennett Ellingson.)

the middle of the train or somewheres along there.

Q. If the train is proceeding, pushing only a crummy ahead of it, what do the company regulations require?

A. One of those brakemen, and usually both of them, are out there, but one of them has got to be out there. [422]

Q. Out where?

A. On the front end of this crummy, and see that everything is clear, and then give the engineer a signal to go.

Q. Was this rule in force and effect on the 21st of May, 1940?

A. Yes, sir.

Q. How long prior to that time was this rule in force and effect?

A. Well, I don't know the exact date that I started to work for this company, but it is close to around 17 years, and it has been in force all of that time.

Q. What has been done to enforce the observance of this rule by the train crews?

A. By everyone connected with the head of this outfit watching it very carefully.

Q. Have you observed trains crossing the highway crossings, as to whether or not the rules regarding flagging have been obeyed by the railway crews?

A. Have they been obeyed?

Q. Had they been obeyed?

A. Well, if they hadn't of been obeyed, it would have been the same thing as happened on this last occasion.

(Testimony of Bennett Ellingson.)

Q. Calling your attention to the date of May 21, I will ask you what happened on that date?

A. What took place in the beginning of the day?  
[423]

Q. On May 21st, yes.

A. Well, the first duty was to get out of bed and head for camp, per usual. I leave home all the way from three o'clock in the morning to hardly ever later than five o'clock. That particular morning, I was into the camp a few minutes, into the headquarters camp, and from there I was headed towards Quinault.

Going through the Prairie, after I left the railroad camp, I caught up with Engine 18, Locomotive 18, and followed it practically all the way through the Prairie, which is quite a little distance there where the railroad parallels with the highway. Coming to this crossing, I beat the train to the crossing.

Q. What crossing do you refer to?

A. No. 1 crossing, the Prairie crossing. The engineer was blowing his whistle, per usual, shoving, —backing up, shoving the crummy ahead of him.

On this crummy, I didn't see any brakemen. The door was closed on the crummy.



(Testimony of Bennett Ellingson.)

I sat in the car, right alongside of the road, right next to the track, and as the train went on, I stepped out of the car, as the train passed, and then waited until the empties got by.

Q. Then what did you do?

A. I went back to the railroad camp. [424]

Q. What did you do at the railroad camp?

A. I walked over to the board and marked off Mr. Lytle and Mr. Reece's names.

Q. And who was Mr. Lytle and who was Mr. Reece?

A. Mr. Lytle was head brakeman, and Mr. Reece was second.

Q. Did you see anyone at railroad camp at that time?

A. The trainmaster.

Q. And who is the trainmaster?

A. George Groseclose.

Q. Did you have any conversation with Mr. Groseclose at that time?

A. I told him not to put those two men back to work until I talked with them.

Q. Later on the day of May 21st, did you have a conversation with anyone regarding the failure of Mr. Lytle and Mr. Reece to flag No. 1 crossing?

A. I talked to Mr. A. M. Polson, the superintendent.

Q. And where was that?

A. At railroad camp.

Q. And what was said at that time?

A. Oh, I told him what had happened on this crossing.

(Testimony of Bennett Ellingson.)

Q. Anything else?

A. It sounded quite serious to him,—the same as it did to me.

Q. Did you report to anyone else on that day, on May 21st, [425] this incident of their failure to flag?

A. I called Mr. Polson that evening, or the next morning, Arnold Polson.

Q. Where was this report made? Where was this report made to Mr. Polson, Arnold Polson?

A. From railroad camp.

Q. And where was Mr. Arnold Polson?

A. In the office in Hoquiam.

Q. Subsequent to May 21st, and your reporting to Mr. Arnold Polson and Mr. Alec Polson this incident, was there any further conversation among you concerning it?

A. Yes. I met with Mr. Arnold Polson and Mr. A. M. Polson at the railroad camp.

Q. When did this meeting occur?

A. Within a few days or a day or two after that.

Q. What transpired at that meeting?

A. It was talked over.

Q. What was talked over?

A. What happened at this crossing, at that railroad crossing.

Q. What happened,—what incident; let's have it specifically.

A. I explained to them what happened and the decision was made that we would have to let them go.

Q. Did you talk with Mr. Lytle or Mr. Reece on

(Testimony of Bennett Ellingson.)

May 21st, after their failure to flag the crossing. [426]

A. I talked with Mr. Lytle, I think that it was the following Saturday.

Q. And where was this conversation?

A. I think,—it was at Polson's office in Hoquiam.

Q. Will you state what was said at that time?

A. Well, I know we had a very friendly little talk.

Q. Well, what was said?

A. Lytle wanted to know what we were going to do about what happened out there. I told him that it was a pretty serious thing, and I talked it over with Mr. Arnold and Mr. Alec Polson, and his decision was that we couldn't take him back.

Q. What did Mr. Lytle say regarding the failure to flag the crossing?

A. He had said that he knew he was in the wrong for doing it.

Q. Prior to May 21st, 1940, had you had a conversation with Mr. Lytle regarding the flagging at crossings?

A. Yes, sir.

Q. When did that occur?

A. It occurred after he had a runaway, along in about April.

Q. And what was said at that time?

A. I talked on the telephone at first and I was to meet him at his home. I stopped in at his home here in town. He had been off then a couple of days because I told the trainmaster at that time not to take him back until I talked with him?

Q. Concerning what? [427]

(Testimony of Bennett Ellingson.)

A. Concerning a runaway that happened.

Q. Well, what was said when you talked with Mr. Lytle at his home?

A. What it concerned?

Q. What was said?                      A. What was said?

Q. Yes. You have testified the occasion was this runaway, and what was said at that time that you remember talking about?

A. He wanted to know what it was all about that he wasn't called back there the next day or two, and I told him that it was due to that runaway.

I wanted to find out what caused that runaway.

Q. Anything else?

A. He thought, well, probably they didn't have enough brakes set. Well, I told him that was no excuse, that he had been on that run for a long time and he should have had enough brakes set. I told him that we hadn't been in the habit of starting down that grade until the brakes were set, and plenty of them. "Well," he says, "the second brakeman started over the train to set brakes, and lost his brake stick." "Well," I says, "Dave, I will give you another chance up there, but you fellows have got to be more careful from now on."

I says, "You have been plenty careless," and I says, "Don't forget the safety rules, especially on those crossings. We want those crossings flagged,—and that means both of you [428] fellows" which was Reece and Lytle.

Q. In your capacity as assistant superintendent, have you done anything to see that the safety rules

(Testimony of Bennett Ellingson.)

regarding the flagging of crossings was enforced and observed by the train crews?           A. Yes, I have.

Q. What have you done?

A. I have constantly watched them crossings and trains all the way through.

Q. Referring to the 18th of May, 1940, I will ask you what occurred on that date?

A. That was the date of a meeting with some of the employees.

Q. Where was this meeting held?

A. Polson's head office here in town.

Q. And what was the occasion of the meeting?

A. Well, there was a group of trainmen that were in on a new agreement, to set up a new union for the trainmen.

Q. Were you present at that meeting?

A. Yes, sir.

Q. Did you remain at the meeting all throughout the entire period of the meeting?           A. Yes.

Q. Referring now to the official transcript, and quoting Mr. Lytle's testimony, Mr. Lytle said:

"I handed Mr. Polson the agreement, with a letter, and told Mr. Polson we would like to negotiate with him." [429]

Did that occur?

A. What was that question again?

(Whereupon the last question was read.)

The Witness: Yes.

Q. (Mr. Maxwell, continuing): What was Mr. Polson's reply?



(Testimony of Bennett Ellingson.)

A. That he would have to think it over and take it up with an attorney.

Q. Quoting again Mr. Lytle's testimony at page 58 of the transcript, Mr. Lytle said:

"And he," referring to Arnold Polson,—“wanted to know why we were pulling out of the IWA.”

Do you recalled that inquiry by Mr. Arnold Polson?      A. No, I don't think I do.

Q. Was anything said regarding the men leaving the IWA?      A. Not that I recall.

Q. Do you recall Polson saying, “that he thought we”—referring to the crew—“would be better off by staying in the IWA and not splitting it up, as he was running a logging camp and not running a railroad.”

A. No, I don't remember hearing that.

Q. Do you recall Mr. Polson saying that he thought one union would be better than two?

A. Not that I remember of.

Q. Do you recall Mr. Polson saying that “two would probably give us a jurisdictional dispute”?

[430]

A. No, I don't remember hearing that.

Q. Do you remember or recall Mr. Key and Mr. Brant stating, and referring to the transcript, page 59:

“that they thought they would be better off in the Brotherhood; that they had joined the Brotherhood and that they wanted the Brotherhood to represent them”?

(Testimony of Bennett Ellingson.)

A. Yes, I think that I remember them saying that.

Q. To which the next question was:

“Q. Did Mr. Polson say anything to that?”

“A. Mr. Polson said he thought they were making a mistake.”

Do you recall Mr. Polson making that statement?

A. That he thought they were making a mistake?

Q. Yes.

A. For switching over to a different union? No, I don't remember hearing them saying anything like that, that I recall.

Q. State substantially what transpired or was said at that meeting.

A. Well, I remember it was a very friendly meeting. They went away friendly. I remember those two things quite well.

They talked along the lines of the two,—switching over to a different union.

Q. Referring to pages 74 and 75 of the transcript, Mr. Lytle testified that you asked him if

“we were going into the Brotherhood.”

“We” referring to the railroad employees; do you recall ever [431] asking—

The Witness (interposing): What was that statement again, now?

(Whereupon the last question was read.)

(Testimony of Bennett Ellingson.)

Mr. Maxwell: That you had asked Mr. Lytle if the trainmen were going into the Brotherhood?

The Witness: I remember one time about Dave telling about belonging to the Brotherhood for a good many years.

Q. (Mr. Maxwell): The incident referred to, he says further, and this is Mr. Lytle's statement:

"I was standing on the gangway of the locomotive at that time; we were both standing there; the locomotive was running. And I told him that we were,—that most of us belonged, and that I had belonged for a long time. That is all the conversation there was."

Do you recall that incident?

A. I remember him telling me about the Brotherhood.

Q. Did you inquire of Mr. Lytle whether or not he was a member of the Brotherhood?

Mr. Walker: I submit that has already been answered, and object to it as being repetitious.

Trial Examiner Kent: Well, the answer may be taken.

Mr. Walker: He has already said that he remembers Mr. Lytle telling him that Mr. Lytle had been a member of the Brotherhood for a long time.

[432]

Mr. Maxwell: That wasn't the question, counsel.

Trial Examiner Kent: Read the pending question.

(Testimony of Bennett Ellingson.)

(Whereupon the question referred to was read as follows:

“Q. Did you inquire of Mr. Lytle whether or not he was a member of the Brotherhood?”)

Trial Examiner Kent: You may answer.

A. No, I didn't inquire.

Q. (Mr. Maxwell): Referring to the testimony of Mr. Wood who was called by the Board, and at page 112 of the transcript,—page 111 and 112, the question was:

“On or about May 1, 1940, did you have a conversation with Mr. Ellingson about the Brotherhood?

“A. Yes, I remember that very distinctly.

“Q. Where did that take place?

“A. That took place at what they call the dump siding by Old Camp 6.

“Q. What as said at that conversation?”

(Off the record a moment.)

There are a lot of side remarks here that I would like indicated as having been skipped. My statement of that referring to the Brotherhood and Mr. Walker's "Yes", and my remark, "Was this April first or May first?"

“Q. (Mr. Walker): When was it?

“A. Well, it was along about that time; I don't remember the date myself.” [433]

Trial Examiner Kent: Yes, that may be omitted.

“Q. (Mr. Walker, continuing): What was said at that conversation?

(Testimony of Bennett Ellingson.)

"A. Well, we had pulled in there on the siding and were waiting for another train, and I was alongside the engine, and Mr. Ellingson came up to me, and he said, 'How is she working?' I said, 'Pretty good.' Then I said, 'It is working pretty good.' Then I said, 'There is a lot of work that needs to be done on the engine.'

"Q. Did you or Mr. Ellingson say that?

"A. Well, maybe I said that. We were talking about it. Anyhow, Mr. Ellingson said, 'We were figuring on putting this engine in the shop and getting it overhauled; and there is a lot of repair work to be done on other engines.' But he said, 'This Brotherhood trouble has come up, and I don't know how much trouble we are going to have, and it has knocked it all in the head. If there is going to be a lot of trouble, it is going to be shut down.' I said I didn't see why there should be any trouble. I told him, 'It is a cinch the men don't want any.' Then he said, 'This man Groves has brought this trouble up. He is a trouble maker, anyway.' I told him that I didn't think Mr. Groves had brought up anything any more than anyone else; that if he had, I didn't know anything about it. I told him that there wasn't anything that [434] anybody had brought up; that we were all dissatisfied with the setup in the CIO, and we talked it over and made up



(Testimony of Bennett Ellingson.)

our minds to go into the Brotherhood. At that time he didn't like it, he wasn't very well satisfied,——"

That last part was stricken.

Do you recall such a conversation with Mr. Wood?

A. No, sir; I don't.

Q. Do you recall along about the first of April or May, of talking with Mr. Wood at the old Camp 6 pump siding at all?

A. I might have talked with him most any place.

Q. Did you inquire of Mr. Wood whether or not they were going into the Brotherhood?

A. No, sir.

Q. Did you state to Mr. Wood that you were not going to repair any of the engines because Brotherhood trouble has come up?      A. I did not.

Q. Did you state to Mr. Wood that Mr. Groves was a troublemaker?      A. No, sir.

Q. Have you ever talked with Mr. Lytle regarding the flagging of crossings?      A. Yes, sir.

Q. Do you recall in 1937 having any discussions with Mr. Lytle, as follows: reading from page 155 of the official [435] transcript:

"One night I got out to flag No. 3, flagging with a load at night.

"Q. And what did he say?

"A. He told me not to flag the crossing any more."

A. Who said that?

(Testimony of Bennett Ellingson.)

Q. Mr. Lytle testified that, "One night I,"—  
Mr. Lytle,—

"got out to flag No. 3, flagging with a load at night"

"Q. And what did he say?" Referring to you.

"A. He told me not to flag the crossing any more."

A. In shoving cars ahead at the crossing.

Q. That is the only testimony that was given here; that you told Mr. Lytle not to flag the crossing any more.

A. At one time, when we were pulling cars back at night, we got out and flagged them crossings, and later on we cut that out—when we were pulling cars back of the engine.

Q. Distinguish between, or explain what you mean,—pulling cars across?

A. Well, that is with the engine ahead of a trainload of a train of cars.

Q. Would anything be ahead of the engine?

A. Well, crummy as a rule, and sometimes it is 'way behind on the tail end of them at nights.

Q. If the crummy was ahead of the engine, would the crossing be flagged? [436]

A. Yes, sir.

Q. If the crummy,—and all of the cars,—were behind the engine, would the crossing be flagged?

A. Yes, sir. What I was speaking of—those

(Testimony of Bennett Ellingson.)

cars, where I told him that he could discontinue flagging the cars back of the engine——

Q. (Interposing): Well, explain what——

A. (Interposing): At that time we were hauling cars out to Quinault.

Q. By hauling, do you mean pulling them?

A. Pulling them. And one man would get on the crossing, get off of the crummy as they came to the crossing. One man would stay on and flag the crummy across, and the other fellow would step off on the highway and stay there until those empties had gone by, and then he would get on the tail end of the train of empties. They would either stop the train after they got across the crossing, or he would get on and walk up over the string of cars.

The thought was taken up and it was figured that it was just as dangerous for that man to walk up that string of empties at night,—he was taking just as much of a chance as to pull that string of empties over the crossing.

Q. At this time, were you referring to the man riding the crummy and flagging it across, or the man getting off on the highway while the train passed over the highway? [437]

Mr. Walker: I object to that.

The Witness: I——

Mr. Walker: That is repetitious. He explained that.

Q. (Mr. Maxwell, continuing): In your in-

(Testimony of Bennett Ellingson.)

structions not to flag, to which man did you refer?

A. Either one of those men.

Mr. Walker: I make the same objection.

The Witness: Do you want me to answer it?

Trial Examiner Kent: Yes. You may answer, but state what you said.

The Witness: I remember telling Dave that when they were pulling a string of these skeletons over that crossing, that the man that hopped off on the road, off from the crummy, that he wouldn't have to do that any more. Always one man was to stay up on this crummy and flag the crummy across, and the other fellow would hop off on the crossing and stay there on the highway until the cars had passed through, and then he would catch the tail end of those cars. He would either catch the tail end and walk the full length of those cars, or the train would pull into the clear and he would walk up, which they done for a while.

But they never let a train go across without they were—if they were shoving a crummy, without being on the front end of it, and flagging, per usual.

After dark, they signal their engineer with a light. [438] Does that explain it?

Trial Examiner Kent: Yes, I think that is all right.

Q. (Mr. Maxwell, continuing): Referring to the testimony of Mr. Harlan who was called as a witness by the Board, at page 226 of the transcript, the question was:

(Testimony of Bennett Ellingson.)

"Q. On or about April 1940 did you have a talk with Mr. Ellingson about the Brotherhood?

\* \* \* \* \*

"The Witness: There was nothing said about the Brotherhood.

"Q. (Mr. Walker, continuing): What was it that was said?

"A. Mr. Ellingson stopped me as I was going in, and he said that he thought that C. B. Groves was leading us astray."

Did you have such a conversation with Mr. Harlan?

A. Harlan asked me at one time what I thought of the Brotherhood.

Q. Did you state to Mr. Harlan that you thought that C. B. Groves was leading the men astray?

A. No, sir; I did not.

Q. Did you ever make a statement to Mr. Harlan or to anyone else that Mr. Groves was leading the men astray? A. No, sir.

Q. Did you ever state to Mr. Harlan, from page 228 of the transcript,

"Mr. Ellingson made a statement one time that the Northern [439] Pacific was going to take it over. It was a statement made on the engine."

A. No, I never made any statement to Harlan about those things.

Q. Did you ever make that statement to anyone?



(Testimony of Bennett Ellingson.)

A. No, sir.

Q. Referring to the testimony of Mr. Lytle, do you recall an occasion in April or May, 1940, on one day in which there were two wrecks, and riding with Mr. Landi on a flat car?

A. Yes, I do.

Q. Do you recall whether or not Mr. Hill was present at that time?

A. Yes, I think he was.

Q. Quoting now in the transcript,

“Q. And what was said at that time?

“A. They had a couple of wrecks down there. And he was talking about,—he thought they were bucking down there, that there were two unions in there, and they were bucking—something like that, he mentioned. Then he said, ‘One of them fellows is down here now.’ He didn’t say who it was, but I heard him.”

Did you make that statement to Mr. Landi?

A. No, sir.

Q. Did you make that statement to anyone?

A. No, sir. [440]

Q. Referring to page 237 of the transcript, at which Mr. Hill states that you said,

“ ‘It looks like they are bucking.’ That is what he said, and then he said, ‘Some day somebody,—some day they will all be going down the road.’ ”

Did you make that statement?

A. No, sir; I did not.

(Testimony of Bennett Ellingson.)

Q. Did you make the statement that one of the men was leading the men into the Brotherhoods?

A. No, sir.

Q. Mr. Hill quotes you as saying at page 240 of the transcript,

“Well, he said when he got on,—when he got on, he started talking to Mr. Landi, and he said that it looked like they are bucking. He says, ‘In this here Union’,—and he says, there is one of them down,—he says, ‘There is one of them down there now.’ And then he said, ‘It looks like he is leading the men astray.’ ”

Did you make such a statement to Mr. Landi?

A. No, sir; I did not.

Q. Did you make such a statement to anyone?

A. No, sir.

Q. Quoting the witness again, he said that you say:

“Some of these days I will let them all go.”

A. I didn't say any such thing. [441]

Q. Referring to the testimony of Mr. Plesha, who was called as a witness for the Board:

“Along in April”——

page 317,——

“Along in April or May of 1940, did you have a talk with Mr. Ellingson about the Brotherhood?

“A. Yes. That happened at the landing. We planned to leave a donkey there and Mr.

(Testimony of Bennett Ellingson.)

Ellingson, just like always when he comes around, he asked me and the engineer if we belonged to the Brotherhood, and I told him we did, and then he says,

‘What are you fellows going to do if the Northern Pacific takes you over?’ And the engineer answered and said, ‘Polson still owns the railroad.’ ”

Did you make such a statement?

A. No, sir; Plesha asked me if the Northern Pacific was going to take the railroad over.

Q. And what was your reply?

A. I told him anything might happen these days; I hadn’t heard of any such a thing. [442]

#### Cross-Examination

Q. In 1940, was it your custom to be in railroad camp sometime during the day each day? [447]

A. Yes, sir.

Q. And generally, would you stop at railroad camp at night, after the work was done and before going home?

A. Yes, sir; I stopped there at any time of the day and at all hours of the day and night.

Q. Part of your duties as superintendent was to oversee the operation of the railroad, is that right?

A. Yes, sir.

Q. And generally, while you were at railroad camp, you would confer with Mr. Groseclose, would you not?

A. Not always, but——

(Testimony of Bennett Ellingson.)

Q. Generally speaking?

A. Generally speaking, if I didn't have things lined up with him, where something came up in the meantime, I would talk with him.

Q. You would do that to learn about the train movements, the loads that had been hauled, and plans where movements were to take place the next day? [448]

A. As a rule, I know every day just what is going to happen the next day,—in the evening.

Q. (Mr. Walker, continuing): Do you discuss your knowledge of what has taken place every day with Mr. Groseclose in conferring with him every day?

A. We usually talk things over every day, at sometime during the day.

Q. At the conclusion of the day's work on May 20th, you stopped to see Mr. Groseclose, did you not?      A. No doubt I did.

Q. And you talked with him that evening about the train movements of the next day, didn't you?

A. I usually do.

Q. You knew and told him about where the loads were to be hauled from that next day?

A. As a rule, we talk those things over.

Q. And you knew what engines were going to be put in service the next day?

A. Quite,—I usually do.

Q. You knew what time the train movements were to begin the next day?

(Testimony of Bennett Ellingson.)

A . I have a pretty close idea,—we are both in pretty close [449] touch on them.

Q. You also knew who would make up the train crews the next day?

A. Sometimes we work together on it, and sometimes we don't.

Q. But at any rate, that night of May 20, you knew who would make up the train crews of the next day, didn't you?

A. I imagine that I did. I have a close idea.

Q. You knew that night that Mr. Lytle and Mr. Reece would be on No. 18 leaving the yards at 5:30 the next morning, didn't you?

A. There is a chance that I did, and a chance that I didn't.

Q. And that is the reason that you were at Crossing No. 1 when the train went by, wasn't it?

A. No, sir.

Q. You deliberately set out to catch Mr. Lytle and Mr. Reece in a violation, didn't you?

A. No, sir.

Q. (Mr. Walker, continuing): Did you see anyone at railroad camp the morning of May 21, before you left in your car?

A. I think that I seen the trainmaster about his work there that morning. [450]

Q. Where did you see him?

A. Well, he was around the yards there, probably in and out of the office.

Q. In the office also, didn't you?



(Testimony of Bennett Ellingson.)

A. I don't remember personally seeing him particularly in the office, exactly, but he was around the camp there.

Q. What time did you arrive at Railroad Camp that morning?

A. I don't remember exactly, but it must have been around five o'clock.

Q. Was engine No. 18 still in the yards?

A. I don't remember for sure whether it had left yet or not.

Q. How long did you stay at railroad camp?

A. Oh, I was probably around there a few minutes.

Q. And then how long was it before you returned to railroad camp from Crossing No. 1?

A. I was back there shortly after breakfast, I believe.

Q. That would be about 5:30?

A. No—no, breakfast at 6:10.

Q. Where did you go from Crossing No. 1?

A. Back to the railroad camp.

Q. Straight back there? A. Yes, sir.

Q. And after you left railroad camp, did you go straight to Crossing No. 1?

A. I did. [451]

Q. Now, you talked to Mr. Lytle about the Stevens Creek runaway? A. Yes, sir.

The Reporter: Runaway, yes, sir.

Q. (Mr. Walker, continuing): Is what is

(Testimony of Bennett Ellingson.)

called Stevens Creek also sometimes called the camp at No. 4 Junction?

A. We have a No. 4 Junction.

Q. Well, is Stevens Creek——

A. (Interposing) Stevens Creek winds up through that country.

Q. And is there a grade from Stevens Creek downhill? A. Yes, sir.

Q. In the direction in which the loads would be moving?

A. From Number 4 Junction down through the Stevens Creek country.

Q. At the bottom of the grade, is there a water tank there? A. Yes, sir.

Q. Called the Humptulips Water Tank?

A. Yes, sir. [452]

Mr. Reporter, would you please mark this map as Board's Exhibit No. 12?

It is stipulated by and between the parties hereto that beginning with line 17 on page 49 of the official transcript through line 1 on page 54 of the official transcript in case No. XIX R 538 and XIX R 539, may be physically incorporated in this record for the purpose of receiving the exhibit marked Respondent's Exhibit No. 1 in that proceeding without further identification in this proceeding.

Mr. Maxwell: I so stipulate, and reserving my right to object to the exhibit on other grounds than improper identification.

(Testimony of Bennett Ellingson.)

(Matter covered in above stipulation follows herewith:

“Mr. Maxwell: We offer for identification Company’s Exhibit No. 1.

“(Thereupon a document hereinabove referred to was marked for identification as Company’s Exhibit No. 1.)

“Q. (Mr. Maxwell, continuing): Showing you Company’s Exhibit No. 1, I will ask you what that is? [453]

“A. That is a map showing the territory in which the Company operates, and the location of the camps and railroads.

“Mr. Maxwell: Is there any objection to this exhibit? We are offering it at this time.

“Mr. Stevens: Just a minute. May we go off the record?

“Trial Examiner Walker: Off the record.

“(There was a discussion off the record.)

“Q. (Mr. Maxwell): Do you know who made this map? A. I do not.

“Q. Is it a county map or a copy of one?

“A. I believe it is a copy of a county map; it is one that has been used by the company for some time.

“Q. Is that map to scale, do you know?

“A. Those squares or sections are one mile square; the larger ones are six miles square—townships.

“Q. It is an inch to the mile, is it not?

(Testimony of Bennett Ellingson.)

“A. Yes, it is an inch to the mile.

“Mr. Stevens: We have no objection.

“Mr. Maxwell: We will offer the map.

“Mr. Molthan: We have no objection.

“Trial Examiner Walker: Company’s Exhibit 1 is hereby received.

“(Whereupon, the document hereinabove marked as Company’s Exhibit 1 for identification was received in evidence as Company’s Exhibit No. 1.) [454]

“Q. (Mr. Maxwell): Mr. Polson, I will ask you whether or not this map covers the territory in which the Polson Logging Company and the Ozette Railway Company are logging at the present time? A. Yes, it does.

“Q. Does this map show the railway trackage of the company—the Polson Logging Company?

“A. It shows the general location of the main line and the branches; it does not show all the logging spurs.

“Q. Does it show the trackage of the Ozette Railway Company? A. Yes.

“Q. Will you point out to us the railway trackage of the Polson Logging Company as indicated on this map?

“A. The trackage of the Polson Logging Company?

“Q. Starting from Hoquiam, and indicating for us. Suppose we start at Hoquiam.

(Testimony of Bennett Ellingson.)

"A. It starts up here about a mile and a half from the Hoquiam City Limits (indicating) on this side of the river from the highway.

"Q. Is this starting point indicated in any way on the map?

"A. It is indicated by the green line on which 'Polson Logging Company' is shown.

"Q. And this map has a little sticker there with an arrow; is that the starting point of the logging track?

"A. Yes, that is the starting point of the railroad. [455]

"Q. In which direction does the trackage run from the log dump?

"A. In a northerly direction.

"Q. To what point?

"A. It goes northerly until we hit the Headquarters camp, or the railway camp.

"Q. How is the Headquarters or railway camp indicated on the map?

"A. It is indicated by a sticker marked 'RR'.

"Q. How is this trackage shown on the map from the log dump to the Headquarters camp?

"A. By a green line.

"Q. Approximately what is the distance from the log dump to the railway camp?

"A. I think that it is approximately 15 miles; I am not sure as to the distance.



(Testimony of Bennett Ellingson.)

“Mr. Stevens: Doesn’t the scale show it?

“Mr. Maxwell: Not necessarily, because it goes up through a rough country.

“Mr. Donley: I think he has a memorandum that will refresh his recollection on that.

“The Witness: If I have it here. 12 miles.

“Q. (Mr. Maxwell): Approximately 12 miles?

“A. From the landing to the railroad camp.

“Q. How is this line from the log dump to the railroad camp [456] indicated? Is it indicated by the general term ‘main line’ or by what classification?

“A. It is generally referred to as the lower end—a part of the main line.

“Q. Does the main line extend beyond the railroad camp or headquarters camp?

“A. Yes. It could be considered as extending to as far as the start of the Ozette line.

“Q. In which direction does it run from headquarters camp?

“A. Generally, north.

“Q. Will you indicate on the map from camp headquarters or railroad camp the track-age on up the main line?

“A. You mean this green line here (indicating)?

“Q. Yes.

“A. It goes up here (indicating).

“Q. Where does the green line go?

(Testimony of Bennett Ellingson.)

“A. To what is generally referred to as Cook Creek.

“Q. Is there any indication on this map showing the end of this main line?

“A. There is nothing to indicate except it is the end of the green line, indicating the end of Polson Logging Company road and the start of the red line, indicating the start of the Ozette Railway Company line.

“Q. Is that Cook Creek?

“A. Yes. [457]

“Q. Will you write on there ‘Cook Creek’?

“A. Yes. (Writes on map.)

“Q. Is that the end of the Polson Company’s main line?

“A. Yes, it is.”) [458-59]

Mr. Maxwell: May I have an exception?

Trial Examiner Kent: Yes.

Mr. Walker: At this time I offer in evidence that certain exhibit described in the foregoing stipulation and which is marked as Company’s Exhibit No. 1.

Trial Examiner Kent: In the prior case?

Mr. Walker: In the prior case. [460]

Mr. Maxwell: I will object to the introduction of the map on the ground that it has no relevancy to any issue herein involved, and that it is wholly immaterial.

Trial Examiner Kent: It may be admitted.

(Testimony of Bennett Ellingson.)

(Whereupon the document heretofore marked for identification as Board's Exhibit 12, was received in evidence.) [461]

Q. Now, proceeding northward on the map, is the double line which moves out from Hoquiam past what is designated as Railroad Camp, the course of the highway?

A. Well, it is right along in that line.

Q. Where on the map is the Axford Prairie Crossing?

Mr. Maxwell: Indicate it by another "X."

A. Well, this would be right here.

Trial Examiner Kent: Make a circle, and that will make it easier to find. You have already got one cross there.

Mr. Maxwell: A circle.

Trial Examiner Kent: And write in "Axford Crossing" there.

(Witness drawing a circle on the map.)

Mr. Maxwell: Have you got a red pencil there? That will show up better.

And write in "Axford Crossing."

(Whereupon Mr. Walker writes in the words "Axford Prairie Crossing" beside the hereinabove mentioned circle.)

Q. (Mr. Walker, continuing): Axford Prairie Crossing is that part immediately to the right of the circle in red pencil [463] which you have drawn on the map?

(Testimony of Bennett Ellingson.)

A. It is right there close. That circle is just a trifle ahead of where the highway crosses the track. I could put that crossing right on it.

Q. Well, that is all right. Now, is there a road which branches off the highway at the point where Axford Prairie Crossing is, running parallel with the track in a westerly direction?

A. Yes, sir.

Mr. Maxwell: I will object to this as improper cross examination, as being totally immaterial and irrelevant, and as having no bearing on any issue herein, and I object to the form of the question.

Trial Examiner Kent: What is the purpose, Mr. Walker?

Mr. Walker: I will drop that at the moment. I will withdraw that question.

Q. (Mr. Walker, continuing): Now, Mr. Ellingson, going back to the incident of the runaway, at Mr. Lytle's house you told him that he was to be off for a couple of days because of the runaway?

A. Yes.

Q. And you did keep him off for a couple of days? [464]

A. I don't know as I can remember how many days, but it was a few days.

Q. And when did that suspension begin—immediately?

A. Yes, I think that it did.

Q. He didn't work the next day, then?

A. I couldn't say for sure on that, whether he worked the next day or not.

(Testimony of Bennett Ellingson.)

Q. Or the following day—two days after the runaway?

Mr. Maxwell: I submit that the question has been answered. The witness says that he doesn't have a definite recollection.

Q. (Mr. Walker, continuing): You made the assertion on direct examination that he was suspended.

Now, what is your recollection about it?

A. He was suspended.

Q. For two days?

A. I wouldn't say exactly two days.

Q. Well, was it three days?

A. I wouldn't say for sure, exactly.

Q. And the suspension began immediately after you told him about it?

A. I wouldn't say for sure.

Q. Now, when in April was this?

A. I don't remember the exact date.

Q. Well, about when?

A. Around the first of April, right close to the first.

Q. Somewhere in the first week of April, is that right? [465]

A. Well, somewheres in the first, there, yes.

[466]

Mr. Maxwell: We will get the company records, if you wish.

Q. (Mr. Walker, continuing) Now, what is your best recollection at this time as to the length of time that Mr. Lytle was suspended?



(Testimony of Bennett Ellingson.)

A. How long was he suspended?

Q. Yes.

A. I don't remember the exact days.

Q. I didn't ask you the exact dates. I asked you how long was he suspended? [467]

A. Well, I don't remember for sure.

Q. Well, was it one day or two days?

A. I don't remember.

Q. You are the one that invoked the suspension, aren't you? A. Yes.

Q. And you are the one that told about it?

A. Yes, sir.

Q. And you are the one that kept them off the job? A. Yes, sir.

Q. And you are the one that told Mr. Groschlose not to put them back until you told him to, isn't that right?

A. Right close to being correct.

Q. Who would know better how long he was off than you?

A. It is on record somewheres.

Q. You have got the record on it, have you?

A. I imagine that it could be looked up somewhere.

Q. Will you do that?

Mr. Maxwell: We will be glad to. [468]

Q. (Mr. Walker, continuing) That night at the house you told Mr. Lytle not to forget the safety rules, and especially rules concerning crossings, is that correct? A. Yes, sir.

(Testimony of Bennett Ellingson.)

Q. (Mr. Walker, continuing) Did you have any reason for warning [471] him about crossings at that time? A. Yes, sir.

Q. What? A. Slow about acting.

Q. What was that?

A. Slow on getting out, taking his time.

Q. Explain that further.

A. Slow on getting out to flag these crossings.

Q. When did you first observe that?

A. When?

Q. Yes?

A. I watched those crossings regularly.

Q. When did you first observe that?

A. Oh, I imagine it was—it wasn't very long before I had warned him several times on——

Q. (Interposing) Before what?

A. What is your question? [472]

Mr. Walker: Not very long before what?

Mr. Maxwell: What date?

The Witness: Before the date?

Q. (Mr. Walker, continuing) Yes.

A. I had warned Lytle several times about different things and especially crossings.

Q. When did you first warn him about crossings?

A. Well, I couldn't remember the exact date, but it would probably be around three or four years ago, when I first took over this thing. I warned every man.

Q. And what did you say at that time?

(Testimony of Bennett Ellingson.)

A. The same as I told them all, that safety was one of the main things in that railroad.

Q. Is that all you told them at that time?

A. No, sir.

Q. What else did you tell them at that time?

A. The same as I told them all.

Q. What? A. Safety.

Q. Anything else? A. No speeding.

Q. Anything else?

A. Blowing whistles,—slowing down through camps.

Q. What else? [473]

A. Careful over crossings.

Q. That is in sum and substance what you told all of them? A. Yes, sir.

Q. Shortly after you went to work there?

A. When I went to work.

Q. Now, when was the next time that you warned Mr. Lytle?

A. I couldn't remember the exact date.

Q. Well, how long after the first time?

A. I couldn't remember the exact date. I have rode with Lytle several times,—I have probably never rode with him but what something was brought up about safety.

Q. How many times during the time that Mr. Lytle has worked there had you warned him?

A. On what?

Q. About safety?

A. Well, I didn't warn him every day. That is a cinch. But I talked safety.

(Testimony of Bennett Ellingson.)

Q. Just what do you mean by "you talked safety"?

Mr. Maxwell: Well, now, I will object to the form of the question. The matter has been thoroughly gone into by counsel.

Trial Examiner Kent: Reframe the question.

Q. (Mr. Walker, continuing) Under the heading of "safety", what did you discuss with the men?

A. To be careful.

Q. Is that all? [474]

A. To be careful all the way through for the safety of other men.

Q. And that is the sum and substance of it?

A. No.

Q. Well, what else?

A. Well, like I explained,—about slowing down through camps, blowing whistles, careful on trestles, slowing down on trestles and bridges, never letting the train get out of control; to run slow enough so that the trains can be under control at all times; to flag crossings.

Q. (Mr. Walker, continuing) Have you ever at any time before May 21, 1940, observed when the crummy was being pushed by the locomotive without a brakeman being on the crummy in full sight of the engineer at all times? [475]

A. On crossings it is very important and compulsory that they be out on the front of this crummy. When they are travelling along on the main line, and there are no crossings, as a rule they

(Testimony of Bennett Ellingson.)

stay in the crummy and look out through the door or the window. If it is a nice day, you will see them standing out on the crummy.

Q. (Mr. Walker, continuing) Then you have at times before May 21, 1940, when the crummy is being pushed ahead of the locomotive, observed a brakeman being out on the crummy without being in full sight of the engineer at all times, is that right?

A. When they are travelling along on the main line; not when they are going across crossings.

When they are no crossings, they are out there—up until this morning. [476]

Q. (Mr. Walker, continuing) Have you ever discharged a brakeman from any of those braking crews prior to May 21, 1940, for not being on the crummy, in full sight of the engineer, when the crummy is being pushed ahead of the locomotive?

A. On a crossing?

Q. Any place.

A. No, there is no one let out for that reason.

Q. Before May 21, 1940, had you ever observed any brakemen who failed to be on the crummy in view of the engineer when the crummy was being shoved across a crossing?

A. If they hadn't of been out there, they would have been in the same fix as these two fellows were,—if they hadn't have been out on the front of that crummy.

Q. Do you mean that you had never before ob-



(Testimony of Bennett Ellingson.)

served any brakeman not being out on the crummy in full sight of the engineer when the crummy is being pushed across a crossing?

A. I will say that one of them is always out there. [477]

Q. (Mr. Walker, continuing) Does this refresh your recollection: that in late 1938 or early 1939, you had parked your car up the side road which extends westerly off crossing No. 1. While your car was parked there, a locomotive pushing the crummy ahead of it, crossed Crossing No. 1 at approximately 50 miles an hour, and when you flagged it down, the train skidded [478] to a stop in about 90 feet opposite your car, at which time Mr. Groves stood out on the engine gangway and asked you what you wanted?

A. No, sir; if I had of caught something like that going on, Groves wouldn't have been up there today.

Q. Before May 21st, had you ever ridden in the crummy with any of the brake crew?

A. Many times.

Q. And have you ever been in the crummy with the brake crew,—when I say “in the crummy”, I mean in the enclosure, the dog house?

A. I see.

Q. All right. Had you ever been in the dog house on the crummy with the brake crew as the crummy was being pushed across the crossing?

A. I can't say that I was ever in the crummy on any of those crossings,—stayed in the crummy when

(Testimony of Bennett Ellingson.)

that engine went over [479] the crossing? I thought too much of my own hide, outside of the public.

Q. (Mr. Walker, continuing) Have any of the brakeman, while you were riding on the crummy with them, stayed in the dog house while the crummy was being pushed across the crossing?

A. One of them was always out there.

Q. You would have fired the brake crew then, if such had taken place, would you?

A. I certainly would, if they had of both stayed in that crummy.

Q. At that time? A. Yes, sir.

Q. Did you have a talk with any of the trainmen the next or the second day following May 21st, asking them where the brakemen were supposed to be standing when the crummy is being shoved across a crossing? A. I might have.

Q. Do you recall having such a talk with Mr. Thomas?

A. I might have talked with him. I talked many times with him on those crossings.

Q. Do you recall having talked with Mr. Williams about it? A. I might have.

Q. Do you recall having talked to Mr. Price about it? A. No doubt I did.

Q. Do you recall talking to Mr. Key about it? [480]

A. I have talked with them all on those crossings.

Q. Including Earl Wood?

(Testimony of Bennett Ellingson.)

A. I have talked with them all on those crossings—either whistles or flaggings.

Q. Do you recall talking with Mr. Earl Wood, the next day or the second day following May 21st?

A. I don't remember any certain dates, but I have talked with him plenty.

Q. Now, that time after Mr. Stearns was killed, you told Mr. Lytle not to stop and flag the crossings because the train had stopped for Mr. Lytle to catch up after the engine had cleared the train from the crossing, is that right?

A. I don't remember any certain date that I told Mr. Lytle this, to give him this particular order.

Q. (Mr. Walker, continuing) Well, you remember the incident, [481] to you?

A. Yes, I remember that.

Q. Do you recall that that was crossing No. 3?

A. No. 5. I believe.

Q. What is your recollection on that?

A. Do you want the particulars of the accident?

Trial Examiner Kent: No. Your preceding answer was that you believe it was No. 5. The pending question is, is that your best recollection?

The Witness: Yes, No. 5, if I remember right

Q. (Mr. Walker, continuing) Now, at that time, the crummy was pushed ahead of the train, Mr. Lytle dropped off to flag the crossing as the train went over the crossing, is that right?

A. I wasn't there at that accident.

Q. What is that? [482]

(Testimony of Bennett Ellingson.)

A. I wasn't there at the time of that accident. [483]

Q. (Mr. Walker, continuing) Now, Mr. Ellingson, I am calling your attention to an incident which occurred at, as you say, No. 5 Crossing—in which, as Mr. Lytle testified, you told him not to flag the crossing any more. Well, have you got that incident in mind?

A. That I told him not to flag the crossing?

Q. Have you got that incident in mind?

A. Yes.

Q. All right. Now, at that time, while the crummy was being pushed ahead of the train, Mr. Lytle had dropped off to flag the crossing as the train went over the crossing, is that [485] correct?

A. One of the brakemen jumped off.

Q. Well, it was Mr. Lytle, wasn't it?

A. Well, it might have been—it might have been either one of them, whoever it was that was with him or any other brakeman.

Q. After the train had cleared the crossing, the train then stopped, didn't it?

A. Sometimes they did and sometimes they kept on moving.

Q. Now, wait a minute. We are talking about one single incident. That incident that occurred as you say at No. 5 crossing, where, as Mr. Lytle testified, you told him not to flag the crossings any more. Have you got that in mind now? A. Yes.

Q. All right. Now, after the train cleared the crossing, the train stopped, didn't it?



(Testimony of Bennett Ellingson.)

A. Not always.

Q. Didn't that particular train at that particular time stop after it had cleared the crossing?

A. No, they didn't?

Q. All right. A. Not always.

Q. Do you understand my question?

A. Yes, sir; I think that I do.

Q. At that particular time, did that particular train, after [486] it had cleared that particular crossing, stop and wait for Mr. Lytle to catch up with the train again?

A. When they were pulling these empties out? There is no particular night that I can recall that this thing—that that change took place.

Q. (Mr. Walker, continuing) When did you have this conversation with Mr. Lytle?

A. It might have been when we were riding on a train or at a railroad camp, or anywhere else.

Q. What fixes it in your mind that you told him that?

A. We talked it over. I talked it over with several of them, the [487] same as anything else that comes up.

Q. Did you tell the train crew generally the same thing as you told Mr. Lytle?

A. It was generally the same.

Q. Now, isn't it a fact that that conversation with Mr. Lytle occurred in the cab of the engine No. 90 after the train had crossed the crossing, and that the entire crew, including yourself, were riding in the cab of the engine?



(Testimony of Bennett Ellingson.)

A. It wouldn't have been possible for all of us to have been riding in the cab over a crossing.

Q. Well, was it or wasn't that a fact?

A. It was not a fact—that they were always in the cab over those crossings, pushing that crummy.

Q. And did that general change in regulations take place about a month or two after Mr. Stearns was killed?

A. I couldn't recall the dates.

Q. Well, generally, is that about right?

A. Well, now, I really don't know.

Q. What is your best recollection?

A. I really don't know exactly when it took place.

Q. Does that sound about right?

A. Well, I couldn't give you any exact dates on it, because those things take place every day—changes in this and that. You can't recall those dates right down to a day or even a month from the date, as a rule. [488]

Q. You mean that there have been changes made in the regulations?

A. Not in regulations, but those things come up in railroading, just like that came up. Those little things come up.

Q. By changes, you mean countermanding orders that you have previously given?

A. It might not be previous orders, but it might be any little thing where we talk things over about doing such a thing.

(Testimony of Bennett Ellingson.)

Q. On the morning of May 21st, did you go from railroad camp to Crossing No. 1 for the express purpose of finding out if the crossing was being watched by one of the brakemen out on the crummy?

A. As I told you before, I was on my way to Quinault.

The Witness: I never follow a train to any of those crossings, but what I don't see that orders are obeyed.

Q. (Mr. Walker, continuing) That morning of May 21st, did you go from Railroad Camp to Crossing No. 1 for the express purpose of seeing if one of the brakemen were out? A. No, sir.

Q. On the crummy, as the train crossed the crossing? [489] A. No, I didn't.

Q. Then why did you go immediately right back to railroad camp?

A. What else would I do—when anyone pulls a stunt like that?

Q. Why did you go directly back to Railroad Camp?

A. To correct that thing immediately.

Q. And that is what you went out for that morning, isn't it? A. No, sir. [490]

## FRANK LANDI,

called as witness by and on behalf of the Respondent.

## Direct Examination

Q. (Mr. Maxwell) Will you state your name, Mr. Landi?      A. Frank Landi.

Q. Where are you employed?

A. Polson Logging Company.

Q. Were you employed at the Polson Logging Company in 1940?

A. In 1940? Let's see,—it was the first of March, but I don't remember exactly now the dates. We can find out pretty easy.

Q. What is your job with the Polson Logging Company?      A. Section foreman.

Q. Do you recall an incident in which the company experienced two wrecks in one day?

A. Yes.

Q. Do you recall seeing Mr. Ellingson on that day?

A. Yes, yes. He came after the first one—after the second [491] one.

Q. Where were you when you saw Mr. Ellingson?      A. I was on the track, by the wreck.

Q. Were you and Mr. Ellingson riding on a flat car at any time?

A. We did, after we found out that there was another wreck ahead of us.

Q. Do you recall having a conversation with Mr. Ellingson at that time?

(Testimony of Frank Landi.)

A. No, I haven't—the only thing that I know, I was really thinking it might be my fault they had so many wrecks, because I had the responsibility over the tracks, but I never had any other conversations that I know.

Q. Do you recall Mr. Ellingson saying,—and I am quoting from page 234 of the official transcript:

“One of them fellows in down here now.”

And further, on page 235:

“they were bucking”?

A. No, I never recall anything like that.

Q. Do you recall Mr. Ellingson saying, and I am quoting from page 237 of the official transcript:

“It looks like they are bucking.” “Some day somebody,—some day they will all be going down the road.”

A. No, I don't.

Q. Do you recall Mr. Ellingson saying anything about the train [492] men and engine men going into the Brotherhoods?      A. No.

Q. Do you recall Mr. Ellingson saying, “One of them was leading them into it”?

A. No, I don't recall that.

Q. Do you recall Mr. Ellingson saying, and I am quoting from page 241 of the transcript,

“‘In this here Union’,—he says,—and he says there is one of them down,—he says, ‘There is one of them down there now.’”

Do you recall that?

A. No, I don't.

(Testimony of Frank Landi.)

Q. Do you recall him saying "It looks like he is leading the men astray"?

A. I don't recall that.

Q. On that day, did you have any discussion with Mr. Ellingson at all about the Brotherhood or any other union?

A. No, I don't.

Q. Have you ever discussed the Brotherhood with Mr. Ellingson?

A. I haven't.

Q. Has Mr. Ellingson ever discussed it with you?

A. No. [493]

Q. At that time, there was a rumor going around that the Northern Pacific was going to take over the Polson Line, is that right? [494]

A. No, I didn't really pay any attention to what was going on along that line.

Q. (Mr. Walter, continuing) You didn't hear about a big railroad going to take over the Polson line?

A. No, I didn't.

Q. But from what you heard, you thought that the railroad men on the Polson Line were going into the big railroads?

A. Well, I couldn't tell you, because I never had it in my mind that I heard anything like that.

Q. But something like that?

A. No, I couldn't tell you that it was even something like that.

Q. Well, what was it that you heard about the big railroads?

A. I didn't hear nothing about the big railroads.

Q. Oh, you didn't?

A. No.



(Testimony of Frank Landi.)

Q. Was anyone else on that car at the time you and Mr. Ellingson were riding on it?

A. I do believe,—because there are so many different brakemen, sometimes,—I haven't learned them all yet,—but I believe it was a fellow by the name of Nelson,—I don't know the last name. [495]

Q. Does it refresh your recollection that his name is Nels Hill?

A. I believe it is, yes; that is what I heard about it.

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### R. R. GOLICK

called as a witness on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Maxwell:

Q. Will you state your name for the record, please?      A. R. R. Golick (spelling).

Q. Where are you employed?

A. Polson Logging Company.

Q. Were you employed by the Polson Logging Company in 1936? [496]      A. Yes.

Q. In what capacity were you employed in 1936?

A. Timekeeper, and I also covered in cases of emergency, in the absence of the foreman, such tasks as bookkeeping matters, and if they were beyond my authority, to inform the proper authorities.

(Testimony of R. R. Golick.)

Anyway, it was my obligation to see that things were going right.

Q. Where were you stationed at that time?

A. Polson's railroad camp. That was after the 28th of March, 1936,—June.

Mr. Maxwell: Let me have Respondent's 1.

Q. (Mr. Maxwell, continuing): Handing you Respondent's Exhibit No. 1, I will ask you if you know what that is? A. Yes, I do.

Q. Will you state what it is?

A. As the heading implies, logging safety standards, covering railroads in general logging camps as outlined by the state.

Q. When did you first see that?

A. I do not recall the exact date. However, it was during my stay there at railroad camp.

Q. What did you do with the respondent's Exhibit No. 1?

A. Well, that exhibit,—yes, the exhibit—that came up shortly after an accident had occurred there at the No. 5 Crossing. It was during a time or a period when the Polson [497] Logging Company was putting on a campaign to cut down the accidents, and stressing proper care in railroad procedure, which covered of course everything with-in common sense, covering the railroad and its care.

Q. (Mr. Maxwell, continuing): Did you receive at Railroad Camp a number of copies of Respondent's Exhibit No. 1? A. Yes, I did.

Q. (Mr. Maxwell, continuing): Where, if you

(Testimony of R. R. Golick.)

know, did Respondent's Exhibit No. 1 come from, into your possession?

A. It came from the main office apparently from the safety engineer.

Q. How many copies did you receive?

A. I do not recall the exact number, but a stack about that high (indicating).

Q. Can you estimate the number? [498]

A. Oh, it must have been about between 20 and 30.

Q. And what was done with those copies?

A. They were placed where everyone that wanted to could get them, and a sign placed over them, "Take one and use it" and we tried to make it a special point to get one to each locomotive and every machine.

Mr. Walker: I move that that be stricken.

Trial Examiner Kent: It may be stricken.

Q. (Mr. Maxwell, continuing): What did you do with these copies?

A. We placed them out where everyone could get them that wanted to, and placed a sign over them, "Take one and use it".

Q. (Mr. Maxwell, continuing): Did you pass these copies out to any of the employees?

A. Yes.

Q. What classes of employees were they given to?

A. We placed special emphasis on machines, donkeys, locomotives, any place where emergency

(Testimony of R. R. Golick.)

signals would be necessary in case of an emergency or otherwise.

Q. Were they given to trainmen? A. Yes.  
[499]

Q. In your capacity, were you familiar with regulations or rules of the company regarding the flagging of highway crossings?

A. Yes,—more or less; perhaps not entirely.

Q. I will ask you where you were living in 1937 and 1938.

A. Part of that time I was staying at my folks' place, close to the crossing.

Q. (Mr. Maxwell, continuing): Which crossing? A. Crossing No. 1.

Q. Is that crossing designated by any other name?

A. The crossing at Axford Prairie.

Q. Have you observed trains crossing at the crossing? A. Yes.

Q. What was done by the trainmen when the trains crossed the crossing? [500]

Mr. Maxwell: You may answer.

A. The brakemen generally, in fact every time I saw it, would stand out on the crummy, with the train either at a kind of a dead stop, or proceeding under control. The brakeman would stand [501] out as near the end as practicable and look for traffic on the highway, and signal the engineer accordingly.

(Testimony of R. R. Golick.)

Mr. Maxwell: Your witness. Oh, one more question.

Q. (Mr. Maxwell, continuing): Were copies of Respondent's Exhibit No. 1 given to trainmen by you? A. Yes.

Mr. Maxwell: Your witness.

Cross Examination

By Mr. Walker:

Q. What do you mean, the trainmen signalled the engineer correspondingly?

A. Accordingly.

Q. All right. Accordingly.

A. If he saw fit to proceed, he would give the signal to go ahead. If not——

Q. (Interposing): How would he give that signal? What else?

A. That is all. What else do you mean?

Q. I am asking you to explain what you mean by "give the signal accordingly"?

A. Just that.

Mr. Maxwell: Let the record show that the witness waved his arm with a forward motion.

Q. (Mr. Walker, continuing): That is the only signal that you have seen the brakemen give the engineers?

A. Yes, that is right. There is no occasion to give any other.

Q. Now, what do you mean that the brakeman would stand on the [502] crummy and the train would either stop or the train would approach under control?



(Testimony of R. R. Golick.)

A. It would either stop at the crossing, or approach under control,—under control,—at a speed at which he could stop in the event of an emergency on the crossing, so that he could stop before bumping into anything on the crossing.

Q. (Mr. Walker, continuing): What speed did you observe was a speed under control?

A. Do you want that in miles? I think you can guess it just as well as I can.

Q. Let's have your guess, then.

A. Well, that speed would be reduced as they approached the crossing.

Q. At what speed?

A. Just fast enough to stop in the event there was anything there on the crossing.

Q. What is your guess as to miles?

A. Well, if there was something on the crossing, it would be nil.

Q. Go ahead. What if there wasn't?

A. Well, perhaps five or maybe ten. [503]

Q. (Mr. Walker, continuing): What trainman did you give respondent's exhibit 1 to?

A. I tried to cover all of them.

Q. Did you?

A. Yes, I made a special point to try to get every one, and had that sign there, "Take one and use it".

Q. Now, do you mean brakemen?

A. Each locomotive.

Q. Did you give a copy of respondent's Exhibit 1 to each one of the brakemen?

(Testimony of R. R. Golick.)

A. Each locomotive, which was accessible to the brakemen or by the brakemen.

Q. Did you give a copy of respondent's exhibit 1 to each one of the brakemen? A. No.

Q. Did you give a copy of respondent's exhibit 1 to each one of the engineers? A. No. [504]

Q. (Mr. Walker, continuing): Where was your home with respect to crossing No. 1?

A. About 300 yards from the crossing,—about.

Q. And did you stand outside the house or inside of the house?

A. It all depends upon what I was doing at the time. I lived inside of the house.

Q. And there were times when you observed this from inside of the house? A. Yes.

Q. Will you mark on what has been identified as Respondent's Exhibit 1 in the previous proceeding—Company's Exhibit 1 in the previous proceeding, with this pen, where your house was situated?

Mr. Maxwell: Point out to him Axford Prairie Crossing on that big map.

The Witness: Right there (indicating).

Here is Railroad Camp here, and here is the crossing there (indicating). Do you want me to make a cross there?

Mr. Walker: Yes. [506]

Mr. Maxwell: Where your house is, approximately.

(Thereupon the witness marks on the map.)

(Testimony of R. R. Golick.)

(Mr. Walker marks a cross at the point indicated and wrote "Golick house" on the map.)

Q. (Mr. Walker, continuing): There has now been marked on the map with a pen, an "X" opposite which there is the description "Golick house". Is that correct? A. That is right.

Q. Now, what brakemen did you see out on the crummy these times when you observed the crossing?

A. I do not recall any particular man, but it would be any brakeman that worked on the Polson line. I cannot recall any incident which would renew my memory on that as to those that I had seen. [507]

Q. At any time you were observing Crossing No. 1, had you observed any brakemen failing to be out on the crummy in full view of the engineer when the crummy was being shoved across the crossing? [510] A. Yes.

Q. Who?

A. But that was sometime ago. I think that was prior to the dates which are under discussion.

Q. You mean prior to what?

A. The dates under discussion.

Q. Well, what dates are you discussing?

A. The same ones you are, I think. Let's see,—oh, the former part of '36. [511]

GEORGE GROSECLOSE

called as a witness by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Maxwell:

Q. Will you state your name for the record, please? A. George Groseclose.

Q. Where are you employed, Mr. Groseclose?

A. Polson Logging Company.

Q. In what capacity are you presently employed?

A. Trainmaster.

Q. How long have you been employed in that capacity? A. Since October, 1939. [512]

Q. Prior to October, 1939, were you employed by the Polson Logging Company? A. Yes.

Q. In what capacities were you employed?

A. As a brakeman.

Q. And during what period were you employed as a brakeman? A. From 1932 to 1939.

Q. I will ask you whether or not the company had any rules or regulations regarding the flagging of highway crossings? A. Yes, they did.

Q. Were those rules in effect on the 21st of May, 1940? A. Yes.

Q. How long prior to that time had they been in effect?

A. I couldn't say. They were in effect when I went to work there.

Q. Did anyone instruct you as to the rule of flagging the crossing?

(Testimony of George Groseclose.)

A. Yes; the Trainmaster.

Q. And who was that?

A. Billy Gordon; William Gordon, you might say; that was his right name.

Q. In your capacity as trainmaster, have you instructed trainmen regarding the flagging of crossings?      A. Yes.

Q. Do you know Mr. Dave Lytle? [513]

A. Yes, I know him.

Q. I will ask whether or not you have given those instructions to Mr. Lytle?

A. Yes, I have.

Q. Prior to May 21, 1940, had you given that instruction to Mr. Lytle?

A. Will you give me that question again, please?

Q. Prior to May 21st, 1940, had you given that instruction to Mr. Lytle regarding the flagging of crossings?      A. Yes.

Q. How long prior to May 21, 1940, and immediately preceding that date, had you instructed Mr. Lytle regarding the flagging of crossings?

A. About two weeks before he was discharged,—during, just shortly after the time he had the run-away.

Q. Will you state what was said at that time and where the conversation took place?

A. As I remember it, the engine was taking oil, and Dave Lytle came across the track there to see where he was to tie the engine up. I couldn't recall just how the conversation came up, but he said



(Testimony of George Groseclose.)

that Bennett gave him hell about a runaway and also about flagging the crossings; and I told him that that was the rule, and if Bennett wanted the crossings flagged, that he had better do—that he had better flag them. That was about two weeks, to the best of my knowledge, before [514] he was discharged.

Q. Had you instructed other brakemen regarding the flagging of crossings?      A. Yes, I had.

Q. I will ask you what the company rule required regarding the flagging of crossings?

A. The company rule was that you proceed up to a crossing under control. When I say “under control”, I mean about three miles an hour, and if a crossing was clear, if there was no cars coming, to flag the engine across the crossing. If there was a car coming, we stopped and the car went across the crossing first.

Q. Where was the brakeman when this flagging was done?

A. He was out about five feet in the highway on the side next to the engineer.

Q. Would that be the front end of the crummy?

A. That would be the front end of it.

Q. Assuming that the engine was pushing the crummy and a string of empties ahead of it, what was the rule regarding the flagging of crossings?

A. Stop and flag the crossings.

Q. What was done by the trainman?

A. He had a red flag. He walked on the high-

(Testimony of George Groseclose.)

way, ahead of the empties; he looked up the highway both ways and if there was no cars coming, he flagged the engine on across the [515] crossing.

Q. In the event the head brakeman did not go out to flag, what was the requirement regarding flagging by the second brakeman?

A. One of them was supposed to be out there at all times, when they were crossing the crossings.

I didn't quite get your question clear. May I ask, shoving empties or just the crummy?

Q. Just the crummy.

A. Just the crummy.

Q. If they were shoving empties, what was the requirement?

A. When they shoved empties, it was the requirement when I worked second brakeman to be in the middle of the empties, in sight of the engineer and the head brakeman and relay the signal from the head brakeman, whatever it might be—to stop or proceed.

Q. In what form were these regulations,—written or oral?      A. Oral.

Q. And how were they communicated to the—by whom were they communicated to the trainmen?

A. By whom?

Q. Yes.      A. The trainmaster.

Q. Anyone else?

A. And the man in charge. Mr. Morgan, he was there at that time. [516] And Pete Klein before him. I believe it is spelled K-l-e-i-n (spelling).

(Testimony of George Groseclose.)

Q. Have you heard Mr. Ellingson communicate this regulation to the trainmen?

A. Yes, I have.

Q. Was that prior to May 21, 1940?

A. Yes.

Mr. Maxwell: Your witness.

Cross Examination

Q. (Mr. Walker) What trainmen did you hear Mr. Ellingson communicate the regulations to?

A. Which trainmen?

Q. Yes. A. C. B. Groves, for one.

Q. When was that?

A. The exact date, I haven't that.

Q. About?

A. Well, I would say in the first part of 1940, I would say.

Q. Where? A. At Railroad Camp.

Q. Where in Railroad Camp?

A. As I remember it, it was out in front of the office.

Q. Who all were present?

A. Mr. Ellingson and I and Mr. Groves were three.

Q. Who? [517]

A. And Mr. Groves, for three. I don't remember if the second brakeman was there or not.

Q. Who was Mr. Groves' second brakeman there at that time?

A. The second brakemen changed quite frequently, and I don't remember who was working with him at the time.

(Testimony of George Groseclose.)

Q. What run were they working?

A. I believe it was the Camp 14 run. I am not positive about that.

Q. What train were they working?

A. I believe it was Locomotive 90.

Q. What was said?

A. He warned Groves about flagging crossings.

Q. What did he say?

A. He said that he wanted the crossings flagged.

Q. What else did he say? A. That is all.

Q. What did Mr. Groves say?

A. He said he would.

Q. Did Mr. Groves say anything else?

A. No, not that I recall.

Q. How did that conversation happen to come up? A. I couldn't say.

Q. Who brought it up? A. Mr. Ellingson.

Q. Did he give any reason for bringing it up?

[518]

A. Not to me.

Q. He didn't tell you? A. No.

Q. Now, when did you give Mr. Lytle instructions?

A. When did I give Mr. Lytle instructions?

Q. Yes.

A. The last time was about two weeks before he was discharged.

Q. Where did that take place?

A. I told you—right in front of the office at Railroad Camp.

(Testimony of George Groseclose.)

Q. Who all were present? A. Him and I.

Q. Just you two? A. Yes.

Q. How did that happen to come up?

A. Mr. Lytle was the one that brought it up.

Q. What did he say?

A. He said that Bennett jumped him about not flagging those crossings, and also about that run-away that he had.

Q. Did Mr. Lytle say anything else?

A. No.

Q. What did you say?

A. I told him, if Mr. Ellingson wanted those crossings flagged, then he had better flag them.

Q. What else did you say? [519]

A. I don't remember of saying anything else.

Q. What did you do then?

A. I went back in the office.

Q. What did Mr. Lytle do?

A. Tied up the engine.

Q. What engine was it?

A. I don't remember. They worked on the relief crew, and they were on a different engine every day.

Q. What run did he have?

A. I don't remember that, either.

Q. What time of day was it?

A. I don't know. It was about, I presume, about five o'clock in the evening.

Q. Where was the second brakeman?

A. With the engine, taking oil.



(Testimony of George Groseclose.)

Q. Have you ever given any special instructions about Axford Crossing?

A. No special instructions.

Q. Were there any other trainmen that you heard Mr. Ellingson tell about the regulations before May 21, 1940, besides Mr. Groves?

A. I can't say that there was.

Q. What? A. I can't say that I did.

Q. That is the only one? [520]

A. Yes, I happened to hear that.

Q. What trainmen have you related the instructions to?

A. I haven't related them so much to the old men, like Red Williams, who has been there for 20 years. He knew the regulations long before I went there.

All the new men, though, that came there after I took my capacity, why, I instructed those.

Q. What trainmen?

A. Most all of them that were there when I came there.

Q. Who?

A. Mr. Lytle came there after,—he went working as head brakeman. Strike that off.

He was working head brakeman before I took the job as trainmaster.

Q. All right; who? A. Eddie Price.

Q. And when did you tell him the instructions?

A. When he went working head brakeman.

Q. When was that? A. I haven't the date.

(Testimony of George Groseclose.)

Q. How long ago?

A. Approximately about 8 months ago.

Q. 8 months ago?

A. Approximately that, yes.

Q. What was he doing before that? [521]

A. Second brakeman.

Q. Anybody else?           A. Charles Johnson.

Q. When did you tell him?

A. Oh, that has been a couple of years ago, I guess, the first time.

Q. Where did you tell him?

A. At Railroad Camp.

Q. Where?

A. I don't exactly remember the exact spot.

Q. Who were present?

A. I don't remember if there was anybody present but him and I.

Q. What did you tell him?

A. I told him to observe those crossings and be careful at them.

Q. Anything else?

A. And to be careful at them, yes.

Q. What else?

A. To protect the rear of his train when he was stopped, if there was another train following him,—to send out a flagman.

Q. What else?

A. To run slow through camps?

Q. Is that all? [522]

A. Approximately all, I guess.

(Testimony of George Groseclose.)

Q. Did you give any instructions to engineers?

A. No. We gave our instructions to the head brakeman. He is the man in charge.

Q. Did you give any instructions to the engineer as to what to do in the event the brakemen did not perform their duties?

A. No, I didn't.

Q. Have you ever observed any brakeman fail-  
ing when the crummy is being shoved across a  
crossing? A. No.

Q. Have you ever observed at any time before  
May 21, 1940, when the crummy was being shoved  
across a crossing without a brakeman being on the  
crummy in full view of the engineer at all times?

[523]

A. No.

Q. Is it all right under your regulations for the  
brakeman to be in the dog house as long as the  
crummy isn't being pushed over a crossing? [524]

The Witness: Yes.

Q. You make reports to Mr. Ellingson and Mr.  
Polson, don't you?

A. I don't understand your question.

Q. (Mr. Walker, continuing) Do you make re-  
ports to them?

A. I keep a record of all dispatching.

Q. And do you report to them on dispatching?

A. It is there for them to see whenever they want  
to see it. [525] It isn't turned in to the main office.

Q. Do you make any other reports to them?

(Testimony of George Groseclose.)

A. No, sir.

Q. If you observed any trainmen violating any regulations, you wouldn't report that either, would you?

A. I would, yes.

Q. Now, in the event you observed a trainman crossing a crossing in excess of three miles an hour, would you report that?

A. I would either tell the brakeman about it, myself, or I would report it to the man in charge.

Q. Well, which would you do?

A. I would, no doubt, report it.

Q. (Mr. Walker, continuing) A train crossing a crossing in excess of three miles an hour would be a violation of your regulations, would it not?

A. Not entirely, no.

Q. Will you explain that?

A. Yes. When I was working as head brakeman, the train never crossed that crossing to exceed three miles an hour when [526] we approached the crossing,—when I was working as head brakeman. If you understand railroading—we approached the crossing, you know, by car lengths—and three or four car lengths, you see, from the crossing, we were always out there observing the crossing. If the crossing was clear and no cars coming, we flagged the train to proceed across.

Q. (Mr. Walker) When the string of cars were behind, the speed limit of three miles an hour applied, is that right?

(Testimony of George Groseclose.)

A. That is when I was braking, yes.

Q. Now, in your present capacity, and in view of your testimony of reporting violations of regulations, if you had observed an engineer permitting his train to go across the crossing in excess of three miles an hour, pulling a string of empties, you would report that, would you not? [527]

A. I would say that I would report them if they weren't under control. I don't exactly say three miles an hour.

Q. (Mr. Walker, continuing) Oh, you don't

A. I told you that three miles an hour was when I was working [528] in the train service.

Q. (Mr. Walker, continuing) Is it your testimony now that the company rule now is that the train must proceed to a crossing at about three miles an hour, and if no cars are on the highway then proceed across the crossing, but if cars are on the highway, the train is to stop? A. Yes.

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### KALIS HECK

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination [529]

By Mr. Maxwell:

Q. Will you state your name, please, Mr. Heck?

A. Kalis Heck (spelling).



(Testimony of Kalis Heck.)

Q. Where are you employed, Mr. Heck?

A. Polson Logging Company.

Q. How long have you been employed there?

A. About 16 years.

Q. In what capacity have you been employed?

A. I started in there as a brakeman. At the present time, I am a shop helper.

Mr. Walker: May I have that answer read, please?

(Whereupon the last answer was read.)

Q. (Mr. Maxwell, continuing): How long have you been a shop helper approximately?

A. About 11 months.

Q. Are you familiar with the rules and regulations of the company?      A. I am.

Q. What is the company rule or regulation regarding the flagging of crossings?

A. In my time, when I was braking, it was, if you were pushing a train, your whole train ahead of you, you stopped,—the flag man went out with a red flag and flagged the crossing. If you were pushing the crummy, you brought your train down under control by signals from the brakeman, from one of them. If the crossing was clear, the highway crossing, you proceeded. [530]

Q. In the event you were pushing the crummy across the crossing ahead of the engine, where was the brakeman supposed to be?

A. One or both of them was supposed to be out

(Testimony of Kalis Heck.)

on the front end, as near the front end as they could be, next to the highway crossing.

Q. In what form are these regulations,—oral or written?      A. Oral.

Q. And how were they communicated to you—by whom, I mean?

A. The first I got was from Mr. Pete Klein, Jack Morgan, Billy Gordon, George Groseclose and Robert Polson, and Bennett Ellingson.

Q. Did this rule requiring the flagging of crossings apply to all main highway crossings?

A. Yes.

Q. Was this rule in force on May 21, 1940?

A. Yes.

Q. And how long prior to that time had it been the rule?      A. Oh, I don't recall that.

Q. Can you give me an approximate period, a month or years?      A. Well, I would say in '28.

[531]

Q. (Mr. Walker, continuing): Are you a member of any labor organization?

A. The Woodworkers of America,—International Woodworkers of America.

Q. During the time you worked on the railroad, before you were put in the shop, were you a member of the Brotherhood?      A. No. [532]

Mr. Maxwell: It is hereby stipulated and agreed that the respondent would call Charles Young as a witness, and that if called, said Charles Young would testify as follows:

During 1937 the Aetna Casualty Company carried Public Liability insurance of the Polson Logging Company covering liability arising out of injuries to the public and the company's logging operations. This included accidents at [533] crossings of the company's logging railroad and state highway. During the year 1937 the company experienced three accidents at said crossings, the last being in November, 1937, and was known as the Stearns accident. The Aetna Casualty Company sent Mr. Charles Young to Hoquiam to investigate the accidents and the Polson Logging Company's enforcement of regulations requiring flagging crossings.

Mr. Young talked with Mr. Len Forrest, Safety Engineer for the Polson Logging Company, and was informed that the company's instructions required trainmen to flag highway crossings.

Mr. Charles Young personally spot checked the enforcement of the company's requirement that highway crossing be flagged by following some of the trains and watching the highway crossings. These spot checks were made over a period of time during the last part of 1937 and the first part of 1938. His checks disclosed that the highway crossings were being flagged.

It is so stipulated?

Mr. Stevens: We so stipulate.

Mr. Maxwell: Mr. Walker?

Mr. Walker: We so stipulate. [534]

## DAVE LYTLE

previously sworn, was recalled as a witness by and on behalf of the Board and further testified as follows:

## Direct Examination

Q. (Mr. Walker): You are the same Dave Lytle who testified here heretofore, is that correct?

A. Yes.

Q. Mr. Lytle, the Saturday following May 21st, in a conversation with Mr. Ellingson, at the office in Hoquiam, did you tell Mr. Ellingson that you knew that you were wrong in being in the dog house on the crummy while it was crossing Crossing No. 1? A. No.

Q. At your house, following the Stevens Creek runaway, did Mr. Ellingson tell you that you had one more chance? A. No.

Q. Did he tell you at that time and place also, "Don't forget the safety rules, especially the rules on crossings"? A. No. [536]

Q. (Mr. Walker, continuing): Mr. Lytle, I call your attention to the testimony of Mr. Ellingson in which he testified that he [538] had a conversation with you about flagging crossing which occurred following a time when the company discontinued the practice of requiring the brakemen to get off the train and flag the crossing; do you have that in mind? A. Yes.

Q. At that time, did Mr. Ellingson tell you never to let the crummy be shoved ahead of the

(Testimony of Dave Lytle.)

engine over crossings without one man being on the crummy and, even if at night, to signal with the lantern?      A. No. [539]

Q. (Mr. Walker, continuing): Were you ever told during all of the time that you worked for the company that one brakeman must be in full sight of the engineer at all times when the crummy is being pushed ahead of the engine, by either Mr. Arnold Polson, Mr. Alec Polson, Mr. Groseclose or Mr. Ellingson?      A. No.

Q. Were you told that, in substance and effect, at any time, by any of them?      A. No.

Q. During all of the time that you worked for the company, were you ever given a copy of Respondent's Exhibit No. 1 by Mr. Arnold Polson, Mr. Alec Polson, Mr. Groseclose or Mr. Ellingson?

A. No.

Q. Did you ever see a copy of Respondent's Exhibit No. 1 posted on the railroad camp bulletin board?      A. No. [541]

Q. Did you ever see a copy of Respondent's Exhibit No. 1 posted in any of the engines?

A. No.

Q. Were you ever told to get a copy of Respondent's Exhibit 1 by Mr. Arnold Polson, Mr. Alec Polson, Mr. Golick, Mr. Groseclose, or Mr. Ellingson?      A. No.

Q. Were you ever told that copies of Respondent's Exhibit No. 1 were available to you, by Mr.



(Testimony of Dave Lytle.)

Arnold Polson, Mr. Alec Polson, Mr. Groseclose, Mr. Ellingson or Mr. Golick?      A. No.

Q. Did you ever see a sign posted in the office at Railroad Camp over a pile of approximately 20 copies of Respondent's Exhibit 1, informing you to "Take one and use it"?      A. No. [542]

Q. (Mr. Walker, continuing): After the day on which you had the runaway down Stevens Creek, did you lose any time because of the runaway?      A. No.

Q. That day on Stevens Creek, did you set any brakes on the cars?

Mr. Maxwell: I will object to that as being totally immaterial—whether he did or didn't.

Trial Examiner Kent: I will sustain the objection.

Mr. Walker: After leaving No. 4 Junction, on the Stevens Creek run, did you have occasion to stop at any place?

Mr. Maxwell: I will object to that as totally immaterial, having no bearing upon the issue, and being improper rebuttal.

Trial Examiner Kent: What is the purpose of the inquiry?

Mr. Walker: The purpose of this, Mr. Examiner, is to elicit rebuttal testimony from this witness to the effect that the engine crews at all times, while running on the Stevens Creek run, stopped at the Humptulips Water Tank to take water; that

(Testimony of Dave Lytle.)

on this date, after leaving No. 4 Junction, the train was able to stop at Humptulips Water Tank, even though it had slipped a tire.

Trial Examiner Kent: It wasn't able, or was able?

Mr. Walker: Was able. [543]

Trial Examiner Kent: Well, what is your contention as to the materiality? That is what I wanted you to state?

Mr. Walker: If I remember correctly, when we were in session before the recess, I think that at that time I took the position that testimony concerning the runaway was not material because of its remoteness and because of the fact that it was not being made an issue as a reason for discharge.

However, when the respondent was putting in its case, Mr. Ellingson testified that he spoke to Mr. Lytle about the runaway, caused him to be suspended for two days by reason of the runaway, and further warned him about crossing crossings.

And he says the reason he remembered warning him about crossing crossings is because he had been getting slack in his work.

Now, on cross examination I asked Mr. Ellingson if it wasn't true that the engine on that day hadn't slipped a tire and was ordered to be put in the shops by Mr. Alec Polson.

It is purely a matter going to the credibility of the witness, Ellingson.

(Testimony of Dave Lytle.)

Mr. Maxwell: You can't impeach a man on a collateral matter, Mr. Examiner.

That point is pretty well established, and it has no bearing upon any issue here.

I believe there was testimony as to the conversation that he was warned about the safety rules, and particularly cautioned [544] to observe the flagging of crossings, as had been done before. I can't see the materiality of counsel's contention.

Trial Examiner Kent: I will sustain the objection.

Mr. Walker: Under the ruling that this matter is immaterial, and further that it cannot be used for impeachment purposes, then I move that all testimony anywhere in the record relating to the Stevens Creek runaway be stricken.

Mr. Stevens: I would like to urge, Mr. Examiner, in support of Mr. Walker's motion, and by inference, at least, all that has been said here and testified to heretofore on that subject would tend at least or was intended to indicate that Mr. Lytle's services, other than this particular question of flagging No. 1 crossing, was not satisfactory, and that may have entered into the reason for his discharge.

And inasmuch as respondent opened it up on cross examination, if it is received for one purpose, it should be received for all purposes.

Mr. Maxwell: Mr. Examiner, may I be heard on that?

(Testimony of Dave Lytle.)

I recall that on cross examination of Mr. Lytle, I asked him about this runaway. It is true that was for the purpose of fixing a date,—the date of the conversation between Mr. Ellingson and Mr. Lytle.

Then I asked him if Mr. Ellingson at that time didn't also warn him and refresh his recollection on the flagging of crossings. [545]

Now, the Stevens Creek runaway, as far as any testimony in this record, I don't think that it amounts to anything as far as the issues are concerned.

Mr. Walker: Will you join in the motion?

Mr. Maxwell: What is that?

Mr. Walker: That it all be stricken.

Mr. Maxwell: Including the suspension and everything. The only purpose of that was to fix the date.

Trial Examiner Kent: Well, in view of counsel's question, that that was only to fix the date, I think that it may be stricken other than——

Mr. Walker (Interposing): Stricken for all purposes?

Trial Examiner Kent: All purposes excepting that part of it, at least,—that it was inserted in the record to fix the date that certain conversations took place.

Q. (Mr. Walker, continuing): About two weeks before May 21st, 1940, in front of the office at Railroad Camp, did you have a conversation with Mr. Groseclose in which you said, "Bennett jumped me



(Testimony of Dave Lytle.)

about crossings and the runaway", to which Mr. Groseclose replied, "If Mr. Ellingson wants crossings flagged, you had better flag them"?"

A. No.

Q. At any time before May 21st, 1940, were you warned about your work being careless, by Mr. Ellingson or Mr. Arnold Polson or Mr. Alec Polson or Mr. Groseclose? [546]

A. No. [547]

Q. (Mr. Walker, continuing): At any time before May 21, 1940, were you warned about crossing rules by Mr. Ellingson?

A. No.

Q. Or by anyone else representing the company—that is, Mr. Arnold Polson, Mr. Alec Polson or Mr. Groseclose?

A. No.

Mr. Walker: That is all.

#### Cross Examination

Q. (Mr. Maxwell): Mr. Lytle, do I understand from your testimony that the company had no rule or regulation regarding the flagging of highway crossings?

A. May I have that question again?

(Whereupon the last question was read.)

A. Yes.

Q. (Mr. Maxwell, continuing): You were never instructed to flag a highway crossing?

A. No.

Q. And there was no company rule or regulation that required it?

A. No.

Q. How long have you worked for the company?

A. Since 1934.



(Testimony of Dave Lytle.)

Q. During that time, had it been your practice to flag the highway crossings?

A. Can I explain that? [548]

Q. Just answer the question if you can. I have no objection to your explaining it. A. No.

Q. Have you never flagged a highway crossing?

A. No.

Q. Mr. Lytle, calling your attention to your earlier testimony that in 1937 Mr. Ellingson told you to stop flagging highway crossings,—do you recall that? A. Yes.

Q. Does that refresh your recollection that you had been flagging them?

A. Flagging No. 3 and No. 5 crossings through with loads or empties.

A. So that you had been flagging them?

A. I had been standing in the highway alongside the loads or the empties, yes, but not flagging the trains through.

Q. And why were you doing that?

A. That was orders from Mr. Alec Polson.

Mr. Maxwell: That is all, thank you.

#### Redirect Examination

Q. (Mr. Walker): A while ago, you were going to explain an answer. What was your explanation?

A. That we had been given orders to flag through at night with loads or empties by dropping off the locomotive when the locomotive got on the crossing and standing in the highway with [549]

(Testimony of Dave Lytle.)

a lantern until the train had gotten by, and then catching the tail end, and then either walking over the empties or having the train stopped and then walk alongside the train up to the locomotive again.

Q. Had you ever been given an instruction concerning a rule or regulation to flag crossing No. 1, either day or night, with loads or empties?

A. No.

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### CLAYTON REECE

previously sworn, was recalled as a witness by and on behalf of the Board and further testified as follows:

#### Direct Examination

Q. (Mr. Walker): You are the same Clayton Reece who testified here before, is that correct?

A. Yes.

Q. Mr. Reece, when you came to work for Polson Logging Company, did you work at any time when Mr. Arnold Polson was superintendent or part-time superintendent?

A. No, I don't believe I did.

Q. Were you ever told that one brakeman must be in full sight of the engineer at all times when the crummy is being pushed [550] across ahead of the engine, by Mr. Arnold Polson, Mr. Alec Polson, Mr. Groseclose, or Mr. Ellingson?

A. No.

(Testimony of Clayton Reece.)

Q. Or that in substance and effect by any of them? A. No.

Q. During all of the time that you have worked for the company were you ever given a copy of Respondent's Exhibit No. 1 by Mr. Arnold Polson, Mr. Alec Polson, Mr. Groseclose or Mr. Ellington?

A. No.

Q. (Mr. Walker, continuing): During any of the time that you worked for the Polson Logging Company, did you ever see a stack of approximately 20 copies of Respondent's Exhibit No. 1, with a sign above it, reading "Take one and use it"? A. No. [551]

Q. Were you ever told to get a copy of Respondent's Exhibit No. 1 by Mr. Arnold Polson, Mr. Alec Polson, Mr. Ellington or Mr. Groseclose or Mr. Golick? A. No.

Q. Were you ever told copies of Respondent's Exhibit No. 1 were available for you by Mr. Arnold Polson, Mr. Alec Polson, Mr. Golick, Mr. Groseclose or Mr. Ellington? A. No.

Q. Did you ever see one in any engine?

A. No.

Q. (Mr. Walker, continuing): Were you ever told by Mr. Arnold Polson, Mr. Alec Polson, Mr. Ellington, or Mr. Groseclose, during all of the time that you worked for the company, that one brakeman must be in full sight of the engineer at all times when the crummy is being pushed ahead of the engine across a crossing? [552]

(Testimony of Clayton Reece.)

A. No.

Mr. Walker: That is all.

Cross-Examination

Q. (Mr. Maxwell): Mr. Reece, you have worked as second brakeman, haven't you?

A. That is right.

Q. From whom do you get your instructions as second brakeman?

A. From the head brakeman.

Q. Did the head brakeman ever instruct you about flagging the crossings? A. No.

Q. No head brakeman has ever instructed you?

A. That is right.

Q. Mr. Reece, what is the signal when a man is injured; what is the whistle signal?

A. Different outfits use different signals.

Q. (Mr. Maxwell, continuing): What is the signal at Polson? [553]

A. I don't know.

Q. (Mr. Maxwell, continuing): Mr. Reece, were you familiar with the company regulation requiring the flagging of crossings?

A. I didn't know they had any.

Q. Have you worked with any other head brakeman besides Mr. Lytle? A. Yes.

Q. Have you worked with other head brakemen when the crummy was being pushed across crossings ahead of the engine? A. Yes.

Q. What was done by the brakemen under those circumstances?

(Testimony of Clayton Reece.)

A. What circumstances do you mean?

Q. Where the engine was pushing the crummy ahead of it, across the highway crossing?

A. They all done pretty much the same—used their own judgment.

Q. Well, what was that judgment; what did they do?

A. Sometimes they stood on the flat car and sometimes they stood in the dog house. It just depended on different things—different conditions.

Q. You say they stood out on the flat car; do you mean out on the front end of the flat car?

A. Sometimes.

Q. When they were out on the front end of the flat car, what were they doing? [554]

A. Nothing; standing there.

Q. Well, were they watching for traffic on the highway? A. I suppose, yes.

Q. Did you ever see any of them out on the front end of the flat car give the engineer the “go ahead” or “all clear” signal?

A. Under certain conditions, yes.

Q. Mr. Reece, have you worked on a train in which the engine was pushing a string of empties ahead of it across a crossing? A. Yes.

Q. Where was the head brakeman then?

A. On the head end.

Q. And what did they do on reaching the crossing?

A. They didn't always do the same thing.



(Testimony of Clayton Reece.)

Q. Well, where were you as second brakeman?

A. It depended on the length of the train.

Q. Well, how many cars would they usually push ahead of an engine, a string of cars,—15 or 20?

A. No, I never worked on a job where they shoved that many.

Q. How many is the most that you recall being shoved ahead of the engine when you were working on the train?

A. Mostly it was trucks—12 or 14 sets of trucks.

Q. And where were you when the engine was pushing those across the crossing?

A. On the crummy. [555]

Q. And where was the crummy?

A. Next to the engine.

Q. Did the train stop before crossing the highway?      A. No.

Q. It never did?

A. Oh, sometimes it did—not all the time.

Q. Did the brakeman get out and flag?

A. When he had to stop, yes. When he didn't, he stayed on the end.

Q. Did you ever work as second brakeman with Mr. Groseclose?      A. No.

Q. Were you ever instructed that in the absence of the head brakeman, that you were to do the flagging?

A. No, I never had no instruction to that effect.

Q. You never had any instructions from the head brakeman at all, is that correct?

(Testimony of Clayton Reece.)

A. Yes.

Q. Have you ever flagged a crossing?

A. Sure; I have flagged crossings.

Q. What was the reason for flagging the crossing?  
A. Safety reasons.

Q. Pardon?  
A. Safety.

Q. At whose instructions did you flag?

A. No instruction. [556]

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W. J. WILLIAMS,

called as a witness by and on behalf of the Board.

Direct Examination

By Mr. Walker:

Q. Your name is W. J. Wililams, is it?

A. Yes, sir.

Q. Are you employed by the Polson Logging Company?  
A. Yes.

Q. How long have you been employed by them?

A. Very nearly 20 years, off and on.

Q. And in what capacity have you been employed by them?

A. Mostly as a brakeman—head brakeman.

Q. Where is your residence, where do you live?

A. Hoquiam. [557]

Q. (Mr. Walker, continuing): At any time, when you worked for the company, and Mr. Arnold Polson was superintendent between 1930 and 1934, did he tell you rules of flagging crossings to

(Testimony of W. J. Williams.)

the effect that if cars were being shoved ahead of the engine across crossings, then for one brakeman to be out on the head [558] car in sight of the engineer to stop the train before arriving at the crossing, the brakeman to get off onto the ground, walk ahead to the crossing and if no movement appears on the highway, order the train to proceed and catch the back end after the train has cleared the crossing?           A. No.

Q. Did Mr. Arnold Polson tell you anything in substance or effect like that?           A. No.

Q. Did Mr. Alec Polson or Mr. Groseclose or Mr. Ellingson tell you of such a rule?           A. No.

Q. Or in substance and effect a rule similar to that which I quoted?           A. No.

Q. (Mr. Walker, continuing): At any time when you were employed by the company and particularly when Mr. Arnold Polson was the superintendent from 1930 to 1934, did he tell you of a rule concerning flagging crossings to the effect that a brakeman was to get out on the crummy, when it was being pushed ahead of the engine, before it reaches the crossing, so the brakeman could see if there was any movement on the highway, and to order [559] the engineer to slow the train down, getting it under control, and signalling for a stop if the crossing was occupied?           A. No.

Q. Did he tell you anything like that in substance or effect?           A. No, sir.

Q. Did Mr. Alec Polson, Mr. Ellingson, or Mr.

(Testimony of W. J. Williams.)

Groseclose, tell you of a rule as I have previously quoted it to you?      A. No.

Q. Did either Mr. Alec Polson, Mr. Ellingson or Mr. Groseclose tell you anything like that or to the effect of that which I have quoted?

A. No, sir.

Q. During all of the time that you have worked for the Polson Logging Company, were you ever given a copy of respondent's exhibit No. 1 by Mr. Arnold Polson, Mr. Alec Polson, Mr. Ellingson, Mr. Groseclose,—that Respondent's Exhibit No. 1, Mr. Williams, is that grey bound book lying in front of you.      A. I was never given one.

Q. Did you ever see a pile of approximately 20 or 30 copies of Respondent's Exhibit 1 in the office at Railroad Camp with a sign above it reading "Take one and use it"?      A. No, sir.

Q. Did you ever see a copy of Respondent's Exhibit No. 1 posted in an engine?

A. No. [560]

Q. Were you ever told to get a copy of Respondent's Exhibit No. 1 by Mr. Alec Polson, Mr. Arnold Polson, Mr. Golick or Mr. Groseclose or Mr. Ellingson?      A. No.

Q. Were you ever told copies of Respondent's Exhibit No. 1 were available for you by Mr. Arnold Polson, Mr. Alec Polson, Mr. Golick, Mr. Groseclose or Mr. Ellingson?      A. No.

Q. Now, did you have a conversation with Mr. Ellingson at a time shortly after Mr. Lytle's and Mr. Reece's discharge? [561]

(Testimony of W. J. Williams.)

A. In the office.

Q. How did the conversation start out?

A. Well, he just mentioned that I had been working for the company for a few years, and he just wanted to know about how I would go about flagging a crossing. And I told him, I says, "Flagging a crossing, I don't know of any other way to flag a crossing without stopping; that was the only way I knew of to flag a crossing". He said it wasn't necessary to stop.

Q. And after he said that it wasn't necessary to stop, did you say anything further?

A. I don't believe there was much more. [562]

#### Cross-Examination

By Mr. Maxwell:

Q. Mr. Williams, if I understood you correctly you stated that Mr. Arnold Polson, during the time that he was superintendent, had never instructed you regarding the flagging of crossings?

A. He had not.

Q. Did you ever receive any instructions from him at all?      A. Possibly about the work.

Q. Is it possible that he may have told you and you might have forgotten?

A. Not that I recall, no, sir.

Q. What did you do on reaching a crossing at which you were head brakeman and the engine was pushing the crummy ahead of it—what is done?

A. There were a lot of instances where a man



(Testimony of W. J. Williams.)

maybe would be looking out of the window or standing in the doorway, and there would be occasions where a man would be out a few feet from the dog house.

Q. You flagged the crossings, did you?

A. No; we couldn't flag it that way. [563]

Q. Well, what did you do?

A. We just kept agoing.

Q. Did you look for traffic?

A. Person would naturally look.

Q. Were you in a position out on the end of the crummy—

A. (Interposing): Not out on the end, no,—not all of the time.

Q. Were you ever a brakeman on a train pushing a string of empties across ahead of the engine?

A. I have been several times.

Q. Where does the head brakeman ride?

A. Most of the time he is on the head end of the empties.

Q. And what is the reason for riding there?

A. More or less just a habit—watch the—

Q. (Interposing): Were you ever instructed to ride there?

A. I couldn't say that I had been—just a general habit.

Q. What did you do under those circumstances, when the train approached a crossing—what was the train doing, was the train stopped?

A. Not all of the time.

(Testimony of W. J. Williams.)

Q. Did you get off upon the highway and flag it?

A. If you would see a car coming, possibly.

Q. What about at night?

A. We never shoved empties across at night. That is, I never did.

Q. Did you ever have a copy of Respondent's Exhibit No. 1? [564]      A. No.

Q. You never have had one?

A. I never did.

Q. Were you running out of railroad camp in 1936?      A. Yes.

Q. Did you go in the office there?

A. The only time I was in the office was just to make out the time slip.

Q. Did you look at the call board?

A. Yes.

Q. Do you recall this sign that was up there above a stack of these exhibits which said "Take one and use it"?      A. I do not.

Q. Do you recall that there was some levity about the sign at the time?      A. No, sir. [565]

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### WIRT THOMAS

called as a witness by and on behalf of the Board.

#### Direct Examination

Q. (Mr. Walker): You are Mr. Wirt Thomas, is that correct?

A. That is what they have called me for over 50 years.

(Testimony of Wirt Thomas.)

Q. And where do you live, Mr. Thomas?

A. 605 9th Street, Hoquiam.

Q. Are you employed by the Polson Logging Company?

A. Yes, sir.

Q. How long have you been employed by them?

A. Well, the first time I went to work for them was 1913—off and on since.

Q. In what capacity are you employed?

A. Brakeman.

Q. Are you a brakeman?

A. Brakeman, yes, sir.

Q. How long have you done braking on the Polson system?

A. I think that it was '15—1915.

Q. Since 1915?

A. Yes. [570]

Q. And you are which—a head brakeman or a second brakeman?

A. A head brakeman. I don't work at that now.

Q. Mr. Thomas, during the time when Mr. Arnold Polson was superintendent from 1930 until 1934, during any of that period of time, did he tell you of a rule concerning flagging of crossings to the effect that if cars are being shoved ahead of an engine across a crossing, one of the brakemen must be out on the head car in sight of the engineer, for the train to stop before arriving at the crossing, the brakeman to get on the ground and walk ahead of the train to the crossing, and if no movement appears on the highway, then to order the train

(Testimony of Wirt Thomas.)

to proceed across the crossing and catch the back end of the train after clearing the crossing?

A. No; but I could have saved you a lot of that, because during most of that time I was braking here, I was loading at Camp 8 during most of that period. [571]

Q. (Mr. Walker, continuing): Did Mr. Alec Polson or Mr. Ellingson or Mr. Groseclose tell you of a rule concerning flagging crossings in the manner in which I described it before?

A. No, they never.

Q. Did either of those three tell you anything similar to that, or to that effect? A. No.

Q. (Mr. Walker, continuing): Did Mr. Arnold Polson, Mr. Alec Polson, Mr. Ellingson or Mr. Groseclose or any of them at any time you have worked for the company tell you of a rule concerning flagging to the effect that "One of the brakemen must get out on the crummy when it is being pushed ahead of the engine, before the train reaches the crossing, so the brakeman could see whether or not there was any movement on the highway and order the engineer to slow down, bringing the train under control, and signal for a stop if the crossing was occupied"?

A. Well, no; but at one time Mr. Ellingson was on the car and we was talking about it, and he asked me where I would be if it was shoving—going across, making a crossing of that kind. I said, "Well, I most likely would be out on the flat

(Testimony of Wirt Thomas.)

car—without something happened behind like you had chained trucks or something and if a chain was down, I might be back there putting that chain up and then they would go on and get to the [572] crossing before I could get back over. [573]

Q. (Mr. Walker, continuing): Have there ever been any times, Mr. Walker, when Mr. Ellingson has ridden in the dog house with you?

A. Yes, sir. [575]

Q. (Mr. Walker, continuing): Have there been any of those times, Mr. Thomas, when you and your second and Mr. Ellingson were all in the dog house while the crummy was being pushed over a crossing?

A. Well, I can't say that there ever was. That we was all inside the dog house,—coming to a crossing, I am always curious enough to step out, anyway,—stick my head out and be in full sight of the engineer.

Q. When you stick your head out, are you in full sight of the engineer?

A. Well, you are on some of the engines. On some of the engines there, you can't get in sight of the engineer without hanging over the side of the car. For instance, the 51, the tender is so wide and the oil tank is so high that he can't see around it without you get clear out over the side of the car.

Q. Could the engineer on 51 see the brakeman if the brakeman was out on the point of the crummy?



(Testimony of Wirt Thomas.)

Mr. Maxwell: I object to that as totally immaterial. 51 wasn't the engine. Suppose it was?

Mr. Walker: The rule isn't limited to engine 18, either. We are willing to stipulate if you want to, counsel.

Trial Examiner Kent: The answer may be taken.

Mr. Maxwell: On the 51? [577]

Trial Examiner Kent: Yes.

Mr. Walker: Since the rule applies to the 51, I presume.

Mr. Maxwell: Certainly. It applies to all, and has for many years.

Mr. Walker: Will you read the question, Mr. Reporter?

(Whereupon the question referred to was read as follows:

"Q. (Mr. Walker): Could the engineer on 51 see the brakeman if the brakeman was out on the point of the crummy?")

The Witness: Not without the engineer was hanging a long ways out the window, he couldn't.

Mr. Stevens: Your witness, Mr. Maxwell.

#### Cross Examination

Q. (Mr. Maxwell): Mr. Thomas, have you ever ridden on Engine 51 when it was pushing a crummy ahead of it across a crossing? A. Yes.

Q. Have you ever ridden on the engineer's seat?

(Testimony of Wirt Thomas.)

A. No, sir, there ain't no seat for you to get on on his side.

Q. Then upon what do you predicate your statement that the engineer couldn't see the brakeman unless the brakeman was hanging out the side of the crummy?

A. You have to get out away from the track to get a signal to him.

Q. Have you ever been up in the engineer's seat and looked back over the tender to the crummy?  
[578]

A. You can't see over it.

Q. Have you ever been up there and looked back?

A. Yes, I have been in it and looked back. I have been up in it.

Q. You flagged the highway crossings when they were pushing cars ahead of the engine, have you not?

A. Yes, that has been a State law in this State for years.

Q. And you flagged the highway crossings when they were pushing the crummy ahead, did you not—by getting out on the crummy?

A. Sometimes, and sometimes—lots of times that I haven't.

Q. If you haven't, your second brakeman has?

A. Well, lots of times you would be on the other end, adoin' something, and won't get back across.

(Testimony of Wirt Thomas.)

There have been lots of cases, lots of times that it has happened that way.

Q. And the second brakeman then flags?

A. Well, I don't know. Some of the second brakemen, you can't depend on them to do anything.

Q. Well, you would expect the second brakeman to do that, wouldn't you, if you were the head brakeman?

A. Well, yes; you are supposed to,—that is the State law, all right.

Mr. Maxwell: That is all.

#### Redirect Examination

Q. (Mr. Walker): Mr. Thomas, how long has it been since a train [579] you have worked on has pushed a string of cars out of railroad camp over Crossing No. 1?

A. Let's see, I don't know; it has been, I guess, around '34 or '35 is when they started hauling them out. They might shove a couple of cars, or something like that. [580]

In the United States Circuit Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

POLSON LOGGING COMPANY,  
Respondent.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Director of the Field Division, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, “In the Matter of Polson Logging Company and Brotherhood of Railroad Trainmen,” the same being Case No. C-2046, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Trial Examiner Henry J. Kent on July 28, 29,

30, 31, September 12 and 13, 1941, together with all exhibits introduced into evidence.

(2) Copy of respondent's telegram, dated September 25, 1941, requesting Trial Examiner for extension of time to file brief.

(3) Copy of telegram dated September 26, 1942, granting respondent extension of time to file brief.

(4) Copy of motion filed by Board's attorney for correction of certain part of transcript, dated September 29, 1941.

(5) Stipulation for the correction of the stenographic transcript signed by all parties, dated September 30, 1941.

(6) Copy of respondent's objection to motion of Board's attorney for correction of transcript.

(7) Copy of order denying motion of Board's attorney for correction in transcript of testimony issued by Trial Examiner Kent, October 30, 1941.

(8) Copy of order for corrections in transcript of testimony of stipulation of all parties issued by Trial Examiner Kent, October 30, 1941.

(9) Copy of Intermediate Report of Trial Examiner Kent, dated January 3, 1942.

(10) Copy of order transferring case to the Board, dated January 6, 1942.

(11) Copy of respondent's request for oral argument before the Board, dated January 12, 1942.

(12) Copy of notice of hearing for the purpose of oral argument, dated January 27, 1942.

(13) Copy of respondent's exceptions to the Intermediate Report.



(14) Copy of list of appearances at oral argument held before the Board, February 17, 1942.

(15) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board April 20, 1942, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Director of the Field Division of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 2nd day of January, 1943.

[Seal]

OSCAR S. SMITH

Director of the Field Division  
NATIONAL LABOR  
RELATIONS BOARD

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[Endorsed]: No. 10342. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Polson Logging Company, Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed January 11, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

POLSON LOGGING COMPANY,  
Respondent,

### STATEMENT OF POINTS

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the Trial of the above-entitled case to the Court:

#### I.

The National Labor Relations Act is applicable to respondent.

#### II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

#### III.

The Board's order is wholly valid and proper under the Act.

ERNEST A. GROSS

Associate General Counsel  
National Labor Relations  
Board

Dated at Washington, D. C., this 4th day of January 1943.

[Endorsed]: Filed Jan. 11, 1943. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by and between the attorneys for the above named parties that in lieu of printing Board Exhibit No. 12, in the record, the Board will submit 5 photostatic copies thereof, and

It Is Further Stipulated and Agreed that this exhibit although not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties with the same force and effect as though printed and that either party shall have the right to have the said exhibit printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 5th day of January, 1943.

ERNEST A. GROSS

Associate General Counsel  
National Labor Relations  
Board

Dated at Seattle, Washington, this 13th day of January 1943.

ROBERT W. MAXWELL, Esq.,  
Attorney for the Respondent  
Polson Logging Company

So Ordered:

FRANCIS A. GARRECHT,  
United States Circuit Judge.

[Endorsed]: Filed Jan. 21, 1943. Paul P.  
O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

RESPONDENT'S DESIGNATION OF  
POINTS

Respondent submits the following statement of points upon which it will rely at the trial of the above entitled matter to the Court:

I.

The Board erred in admitting testimony (from Tr. page 162, line 1 to page 165, line 22) over respondent's objections and in refusing to grant respondent's motion to strike said testimony admitted over respondent's objection.

II.

The Board erred in rejecting respondent's Exhibit No. 2.

III.

The Board's findings that respondent interfered with, restrained, and coerced its employees in the rights granted by Section 7 of the National Labor Relations Act are not supported by substantial evidence.

IV.

The Board's finding that Messrs. Lytle and Reece were discharged for Union activities or membership is contrary to the evidence and is not supported by substantial evidence.

Dated at Seattle, Washington, this 17th day of February, 1943.

R. W. MAXWELL

Attorney for Respondent

[Endorsed]: Filed Feb. 8, 1943. Paul P. O'Brien, Clerk.



